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TEMPORARY WORKER PROGRAMS: BACKGROUND AND ISSUES

A REPORT

PREPARED AT THE REQUEST OF

Senator EDWARD M. KENNEDY, *Chairman*

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

FOR THE USE OF

THE SELECT COMMISSION
ON IMMIGRATION AND REFUGEE POLICY

PREPARED BY THE

CONGRESSIONAL RESEARCH SERVICE
LIBRARY OF CONGRESS

NINETY-SIXTH CONGRESS
SECOND SESSION

FEBRUARY 1980

U.S. GOVERNMENT PRINTING OFFICE

55-752 WASHINGTON : 1980

For sale by the Superintendent of Documents, U.S. Government Printing Office
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Stock Number 052-070-05222-8

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INTRODUCTION

By Senator Edward M. Kennedy, Chairman

Temporary workers have been a part of America's landscape for more than a century. Since the first immigration controls were enacted, temporary workers have come to the United States, both legally and illegally, in large numbers.

Formalized programs to bring in sizable groups of temporary workers first date from World War I. In one form or another, such programs continued over the years until the "bracero" program was ended, after much debate, in 1964. Although many of these temporary worker programs responded to an urgent need for labor, especially during wartime, they have also been controversial and subject to many problems.

Despite this contentious history, there is today discussion once again over establishing some kind of temporary worker program. As in the past, these proposals are tempting as well as problematic, and there is dispute over both the need for them as well as the form they should take.

To assist the Congress, as well as the newly established Select Commission on Immigration and Refugee Policy, in evaluating these temporary worker proposals, I asked the Congressional Research Service of the Library of Congress to undertake a thorough review of the history and recent experience of temporary worker programs in the United States and Europe.

That report, "Temporary Worker Programs: Background and Issues," is now available. It has been prepared by Joyce Vialet, specialist in social legislation, and Barbara McClure, analyst in social legislation of the Congressional Research Service. Working with the staff of the Senate Judiciary Committee, they have produced an excellent review of the problems and options involved in establishing a temporary worker program.

Upon reading their report, I believe the Congress and the Select Commission would be well advised to heed the caution that is the substance of their findings. There remains a vast gap in our knowledge about the migration pressures upon our country, whether legal or illegal, and about the economics of temporary workers in the United States. For every benefit proponents of temporary worker programs can list in support of their proposals, opponents can also compile a convincing list of problems.

In fact, the concluding words of this report sum up the issue before us succinctly: "If the decision is made to move in the direction of an expanded temporary worker program, among the principal lessons to be learned from our 22-year experience with the bracero program and from the European guestworker experience is that the seriousness, complexity, and far-reaching consequences of such an undertaking can hardly be overestimated."

The following report tells us in very clear terms what the options and problems are, as well as the history, of temporary worker programs. I am confident it will be extraordinarily helpful to members of the Select Commission, and to the public at large, in gaining a better understanding of temporary worker programs.

LETTER OF SUBMITTAL

THE LIBRARY OF CONGRESS;
CONGRESSIONAL RESEARCH SERVICE;
Washington, D.C., December 17, 1979.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary;
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am pleased to submit the accompanying report, entitled "Temporary Worker Programs: Background and Issues," which was prepared at your request by the Congressional Research Service.

The report was prepared primarily by the Education and Public Welfare Division. Part I, U.S. Temporary Alien Worker Programs, and Part III, Issues and Options, were written by Joyce Vialet, who coordinated the project. Part II, European "Guestworker" Programs, was written by Barbara McClure. The annotated bibliography on alien labor programs and alien labor, 1975–79, was prepared by Marsha Cerny of the Library Services Division.

We appreciate this opportunity to be of assistance to the Committee on the Judiciary and the U.S. Select Commission on Immigration and Refugee Policy in their deliberations on this complex issue.

Sincerely,

GILBERT GUDE, *Director.*

TEMPORARY WORKER PROGRAMS: BACKGROUND AND ISSUES

Illegal immigration is one of the unresolved problems of the 1970's. The number of undocumented, or illegal, aliens in the United States is estimated to be 3 to 6 million. Their principal country of origin, accounting for at least 60 percent, is Mexico. Many, particularly from Mexico, are believed to come for temporary periods of time. Their motivation for coming is believed to be economic, for employment. Their impact is believed to be principally on the labor market, although there is disagreement about the nature of this impact. Some observers contend that undocumented aliens displace U.S. workers and adversely affect wages and working conditions where they are present in large numbers. Others maintain that they take jobs U.S. workers do not want, at least at the wages which employers are willing or able to pay. Undocumented aliens are part of the underground economy, operating outside the control and protection of the law. Their presence implies at most an inadequacy of our immigration policy and at least the weakness of our immigration law enforcement.

A legally sanctioned large-scale temporary alien worker program has increasingly been mentioned as one possible way to control illegal entry of aliens into the United States. The principal objection to a legal temporary alien worker program is obvious—in view of current and projected U.S. unemployment rates, the large-scale importation of supplemental temporary alien labor is difficult to justify on the basis of need. The rebuttal to this objection is equally obvious—the United States has a large-scale alien labor program, made up of undocumented aliens. The principal difference between this program and a legally sanctioned one is the absence of official regulation and control.

The problem is complicated by the lack of certainty that it is possible to convert most illegal alien workers to legal temporary workers, and thus to bring their entry and activity in the United States under legal control. There are many who argue that expansion of legal opportunities for temporary employment would exacerbate the problem of illegal entry, by attracting additional alien workers. It is argued that our own experience, as well as that of European countries, indicates that it is difficult to protect domestic workers from the adverse effects of temporary alien workers, particularly when they are present in the numbers which would be necessary to accommodate enough of those currently entering illegally for a legal program to function as a viable alternative. On the other hand, it is argued that international migration is a reality, particularly across borders of wide economic disparity such as that which separates the United States and Mexico; that our choice is not whether or not it will continue, but whether it will do so legally or illegally, with or without government regulation.

These issues are explored at more length in the final section of this report, along with the possible options which have been suggested relating to the control of illegal entry through an expanded legal temporary alien worker program. The following is a review of U.S. and European experience with selected temporary worker programs. The purpose of this review is to identify the problems which have arisen under these various programs, and the lessons which may apply to any future attempt to control the illegal flow of alien workers by means of an expanded legal program.

I. U.S. TEMPORARY ALIEN WORKER PROGRAMS

A. World War I: The First Mexican Program

In the past, large-scale temporary alien labor programs have been established in the United States in response to wartime manpower shortages. The first major program began in 1917 and primarily involved Mexicans, although a small number of Bahamians and Canadians also entered for temporary wartime employment.

An estimated 80,000 Mexican workers participated in the program, the majority of whom "worked in the sugar beet fields of California, Colorado, Utah, and Idaho, and in the cotton fields of Texas, Arizona and California." [1] A small number was also admitted for railway work. Under pressure from organized labor, led by Samuel Gompers' American Federation of Labor, this segment of the program was at least officially brought to a close with the end of the war in 1918. The agricultural segment was extended at the request of U.S. farmers through March 2, 1921, and beyond that date "in certain particularly meritorious cases." The policy of allowing exceptions adopted in the final days of President Woodrow Wilson's administration was continued by the Harding administration. According to Mark Reisler, "as late as May 1921, the Labor Department was offering to consider in 'meritorious cases' an 'extension of the stay of aliens imported under the exceptions whose services are necessary for continued agricultural work'." [2]

The entry of Mexicans for temporary labor did not begin with the 1917 program nor, as will be discussed below, did it even temporarily end with it despite the termination of the program. Quoting Otey Scruggs, an authority on this and the early Bracero periods:

> Mexican immigrants had begun to form a reservoir of "cheap" labor for the railroads and farms of the Southwest by the last decade of the nineteenth century. By the early 1920's they were the principal work force in many southwestern farming areas, the trend toward greater reliance on Mexican nationals having been accelerated by the First World War.[3]

A number of factors contributed to the urgent requests for supplemental labor which led to the World War I program. While domestic workers were leaving agriculture for military service and higher paying war production industries, relatively free immigration from Mexico was curtailed by the enactment of the Immigration Act of 1917.[4] The 1917 act, the most restrictive immigration measure adopted in the Nation's history at that point, had been enacted over President

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[1] Scruggs, Otey M. The First Mexican Farm Labor Program. Arizona and the West, v. 2, winter 1960, p. 322. (Cited as Scruggs (1960).)

[2] Reisler, Mark. By the Sweat of Their Brow, Mexican Immigrant Labor in the United States, 1900-1940, Westport, Greenwood Press, 1976, p. 45. (Cited as Reisler (1976).)

[3] Scruggs (1960), p. 319.

[4] Act of Feb. 5, 1917, 39 Stat. 874.

Woodrow Wilson's veto which had been in response to its literacy provision. This provision, combined with the doubling of the head tax to $8 made it impossible for many Mexicans to enter, particularly since the provision barring the entry of aliens for prearranged contract labor was also continued. At the same time, according to Reisler, large numbers of Mexicans left the United States in the spring and summer of 1917 because of rumors that aliens in the United States would be drafted into the U.S. Army. Concern on the part of farmers and the Federal Government resulted in concerted efforts by the Departments of State, War, and Labor to end the rumors, which were believed by some to have been the result of German sabotage efforts.[5]

The Bureau of Immigration, housed at that time within the Department of Labor, was deluged with complaints of labor shortages, intensified by the need for stepped up war production of food supplies. This situation and the Bureau's response to it were described as follows in the 1918 Annual Report of the Bureau of Immigration:

> Hardly had war been declared when representations commenced to reach the bureau from numerous sources to the effect that, with the calling of men to military service and with the simultaneous going into operation of the new immigration act containing the illiteracy test, the supply of common labor for the farms of the Southwest would be reduced and cut off, the farmers of that section having been in the habit of relying to a considerable extent upon labor coming seasonally from Mexico. This matter was given careful thought and investigation. The conclusion reached was that, while there was no little hysteria apparent and while the matter, therefore, was to some extent of a psychological nature, there was considerable basis for the alarm. Accordingly, taking advantage of an exception to section 3 of the immigration act permitting the department to admit temporarily otherwise inadmissible aliens, a plan was devised under which laborers might enter from Canada and Mexico to work in agricultural pursuits. A large number of laborers from Mexico entered under these regulations (issued in May and reissued in amended form in June 1917) and large acreages were planted and record crops harvested throughout the Southwest during the last agricultural season.[6]

The Labor Department order of May 23, 1917, was subsequently revised "to include the admission from Mexico of laborers for work in maintenance of way on railroads and in certain coal mining industries in which the Government is interested and which have a direct bearing upon the conduct of the war."[7]

The workers were admitted under the authority of the ninth proviso to section 3 of the Immigration Act of 1917 which read as follows:

> *Provided further*, that the Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and prescribed conditions, including exaction of such bonds as

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[5] Reisler (1076), pp. 25–26.
[6] U.S. Department of Labor, Bureau of Immigration, Annual Report of the Commissioner General of Immigration to the Secretary of Labor, fiscal year 1918, 1918, pp. 15–16.
[7] Ibid., p. 16.

> may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission.

Quoting from the May 23, 1917, order issued by Secretary of Labor, W. B. Wilson:

> While, obviously, this special exception to general provisions of law should be construed strictly and should not be resorted to except with the object of meeting extraordinary situations or conditions, it can be and should be availed of whenever an emergent condition arises. With agricultural pursuits such a condition now exists in certain sections of the country and is likely to arise in other sections during the continuance of the war.[8]

The order authorized the suspension of the contract labor prohibition, and the head tax and literacy test requirements of the 1917 act for aliens entering temporarily for agricultural employment, and was limited to aliens entering from Mexico and subsequently extended to Canada as well.

The use of the ninth proviso of section 3 as the basis for the temporary admission of contract laborers was important for the precedent it set for the subsequent admission of temporary alien workers. The provision was used again in 1942 prior to the enactment of special legislation which, intermittently and in varying forms, lasted until 1964 as the basis for the bracero program. The so-called H–2 provision of current law, which forms the legal basis for most temporary employment, represents a recasting of the waiver of inadmissibility of temporary contract workers in positive rather than negative terms. The determination of employer eligibility to petition for temporary alien workers under the H–2 provision evolved from the requirements which were, at least formally, made of employers seeking workers entering under the ninth proviso of section 3 of the Immigration Act of 1917.

Secretary of Labor Wilson had not consulted with Congress prior to his issuance of the departmental order admitting temporary alien workers under a suspension of certain provisions of the 1917 act. Congressman John Burnett of Alabama, the chairman of the House Committee on Immigration and Naturalization, informed him that he possessed no such power of suspension, and introduced legislation to repeal the ninth proviso. In a subsequent protest he wrote:

> I do not believe that there is a soul outside your Department that thinks such a construction should be given this Section [of the 1917 act].[9]

According to an account of the exchange of letters between Congressman Burnett and Secretary Wilson, Burnett indicated that the Secretary's bending of the law for farm laborers implied that he could also admit polygamists, prostitutes, and anarchists. Wilson replied that while probably no one "had in mind a situation such as now confronts us when the proviso was first inserted into the law," nonetheless, his use of it "has already removed the feeling of uncertainty amongst the farmers on our Southwest Border and has headed off the

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[8] U.S. Congress. Senate. Committee on Immigration. Emergency Immigration Legislation, part 1. Hearings, 66th Cong., 3d sess., 1921, p. 698. (Cited as Senate immigration hearings (1921).)

[9] John L. Burnett to William B. Wilson, June 2, 1917. Quoted by Reisler (1976), p. 28.

propaganda for the suspension of the Chinese Exclusion Law." He indicated further:

> From many sources we were being pressed to encourage the migration of Filipinos, Hawaiians and other labor of similar character, and to secure the suspension of the Chinese Exclusion Law so that Chinese might be admitted * * * to supply the deficit of farm labor alleged to exist on the Pacific Coast and along the Mexican Border. Of course, we could not yield to importunities of that kind. We have all the race problems in the United States that it is advisable for us to undertake to deal with at the present time * * *.[10]

The chairman of the Immigration and Naturalization Committee was apparently satisfied; his bill (H.R. 4852, 65th Cong.) was not acted upon.

Procedures to be followed in the admission of temporary agricultural workers contained in the May 23, 1917, directive were supplemented by detailed instructions issued by the Labor Department on June 6, 1917. These were supplemented, superseded, and replaced by instructions issued at various points in 1918 by both Commissioner General of Immigration Anthony Caminetti and Secretary of Labor W. B. Wilson. The key points of the procedures are summarized below. They were very detailed; quoting from Reisler:

> Realizing its actions would be scrutinized by Congress and the American labor movement, the Labor Department set forth rigid standards governing the temporary admission of Mexican workers.[11]

The World War I temporary alien program was explicitly presented as a contract labor program. Quoting from the April 12, 1918, departmental order:

> As to be admissible under the circular the aliens must be coming "for the purpose of accepting employment in agricultural pursuits" (for which reason the "contract-labor" as well as the "illiteracy-test" provisions are mentioned in the circular), prearrangement for the employment of all admitted is contemplated. In other words, those who desire to avail themselves of this opportunity, afforded to meet emergency agricultural conditions, must send for or come to the boundaries to get the aliens, and the aliens must not be temporarily admitted until arrangements for their employment in agricultural work have been perfected.[12]

The procedures involved in obtaining the workers were set forth as follows in a departmental order issued June 12, 1918:

> A prospective employer may initiate an application for permission to import laborers under the provisions hereof by filing such application with either a United States immigration or a United States employment official, setting forth the number of laborers desired, class of work, wages offered, and place of proposed employment, and stating that he will comply with all provisions of this circular with respect to any

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[10] Wilson to Burnett, June 8, 1917. Quoted by Reisler (1976), pp: 28–29.
[11] Reisler (1976), p. 29.
[12] Senate immigration hearings (1921), p. 699.

> alien admitted to him. Upon the approval in writing of any such application by a United States employment officer detailed to a Mexican border port in accordance with section X hereof or by the United States employment officer stationed in the vicinity of the place of proposed employment, the immigration officer in charge at such port shall proceed to admit the alien involved in accordance with the provisions hereof.[13]

In order to participate in the program, U.S. employers were required to first apply to the office of the U.S. Employment Service most convenient to the place of proposed employment, and to submit written evidence "that the supply of labor, either locally or at a reasonable distance from the site of the work, is insufficient to meet the demand; or, if the local supply is partially sufficient, the application for permission to import or bring in agricultural laborers shall only be acted upon to the extent of meeting the deficiency between the demand and the local supply." [14] The benefit of the doubt was given the U.S. Employment Service—and domestic workers. Quoting,

> Any doubt which may arise as to the ability of the United States Employment Service to meet the needs in a particular case shall be taken as a reason to withhold granting permission to import agricultural laborers until such doubt can be cleared up.[15]

Once approved to contract alien laborers, the U.S. employer was required "to disclose to the immigration officer in charge at the port of entry his plans with respect to the employment of such aliens in their entirety, including the wages, housing conditions, and duration of employment." [16] The employer was required to "pay the current rates of wages for similar labor in the community in which the admitted aliens are to be employed." [17] They were required to abide by State law regarding housing and sanitation or, in the absence of State law, to maintain conditions satisfactory to the Secretary of Labor. They were further required to advise the officer in charge at the port of entry of any changes in their employment plans for the aliens; to notify the officer immediately if the aliens leave, either for other employment or without their knowledge; and, in a subsequent addition, to bear any deportation charge for the aliens "or any alien family." [18] In an attempt to guarantee that the workers would comply with the terms governing their temporary admission, the employer was required to withhold a specified amount from their wages and deposit it in the U.S. Postal Savings Bank.

The alien workers contracted for by eligible U.S. employers or employer associations were required to be admissible under all other provisions of the immigration law except for those relating to head tax, illiteracy, and contract labor. They were issued identification cards complete with their photographs which they were required to supply. Family members were also admitted. The instructions specified that

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[13] Ibid., p. 704.
[14] Department of Labor Circular and Instructions, Apr. 12, 1918. Senate immigration hearings (1921), p. 701.
[15] Department of Labor Departmental Order, Apr. 12, 1918. Senate immigration hearings (1921), p. 700.
[16] Ibid., p. 699.
[17] Ibid., p. 700.
[18] Departmental Order, June 12, 1918, Senate immigration hearings (1921), p. 706.

"all members of families 16 years of age and over shall be given such [identification] cards; those under 16 shall be recorded, giving name, age, and description." [19]

Admission was for a period of 6 months, with the possibility of an additional 6 months extension. Any alien who failed to accept, or after acceptance abandoned, the prescribed employment—which at one point encompassed "agricultural pursuits, maintenance of way on railroads, or lignite coal mining"—and accepted employment in other industries, was to be arrested and deported. However, the temporary workers were allowed to change employers in the authorized fields of employment, as long as the employers were authorized to hire them and the Immigration Services was notified of the change by the new employer.[20]

While the procedures to be followed were outlined in detail and clarified at frequent intervals, they were not adequately enforced with the result that there was a high degree of "skipping." According to the Bureau of Immigration's Annual Report of 1921, a total of 72,862 aliens had been admitted "under the Department's exceptions" during 1917–21. Of this number "21,400 deserted their employment and disappeared; and, so far as can be ascertained, 15,632 are still in the employ of the original importers." [21] Of the remainder, 34,922 returned to Mexico, 414 died, and 494 were admitted for permanent residence.

The report of the Immigration Service's Supervising Inspector at El Paso in the 1920 annual report includes a detailed critique of the program's problems, which he saw as being directly attributable to the lack of adequate manpower. Quoting, "At the very inception of the plans inaugurated for admitting a sufficient number of laborers into the United States under the department's exceptions to meet the exigencies of the situation engendered by the World War, the writer recommended and repeatedly thereafter urged that a sufficient force of men be supplied to follow up and check importations with a view to insure compliance with the requirements upon which their admission was conditioned." [22] He stated that "an importer may be utterly unmindful of the obligations he assumed toward the government as trustee for his laborers," and noted in general that the employers were lax in filling out the necessary forms and suggested that some allowed the workers to "desert in droves" once their work was completed,[23] rather than pay their return fare to the port of entry. In a subsequent report, the supervisor in charge at El Paso wrote:

> The department has already been fully advised as to the difficulty experienced in having the importers effect the departure from the United States of the remaining laborers originally imported under the departmental exceptions. While some of the importers have in the utmost good faith endeavored to live up to their undertaking with the Government and return such laborers to Mexico without expense to it, many, if not most of them, have neglected or flatly repudiated their obligations in that respect, and it seems highly probable that with the lapse of time they will grow even more unmindful of the benefits which accrued to them

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[19] Ibid., p. 705.
[20] Ibid.
[21] Annual report of the Commissioner General of Immigration, fiscal year 1921, p. 7.
[22] Annual Report of the Commissioner General of Immigration, fiscal year 1920, p. 427.
[23] Ibid.

> from the Government's indulgence and exhibit a greater degree of indifference and remissness in the matter of disposing of these laborers in accordance with the terms of their contract with the Government.[24]

If the growers were not as reliable as might be wished, neither were the alien workers, many of whom were believed to have left agriculture for more lucrative jobs in industry. While the El Paso supervisory inspector observed that, given the comparatively lower wages paid by farmers, it was "but natural in the circumstances that the imported Mexican laborers should desert at the first favorable opportunity," he also saw this as among the possible abuses necessitating increased manpower:

> The writer does not in any manner presume to question the need of the adoption by the department of measures to relieve the labor shortage during the late emergency, nor for their continuance. These are matters which the department has acted upon presumably only after complete investigation and careful consideration; he can not, however, at this juncture, refrain from pointing out that the practice is peculiarly susceptible to abuses of many kinds by reason, mainly, of the lack of officers and employees to investigate and correct the same. If the Government's interests are not adequately safeguarded, it can be stated with no less force and truth that the interests and welfare of the importer are equally unprotected; he has no means of compelling imported laborers to remain in his employ; he can not resort to force or duress, intimidation, withholding of pay, or any one of the many other devices which obviously come to mind. If after importing laborers and conveying them to their place of employment, all at heavy expense, they choose to desert their employer for work in an industry or with another employer offering a higher scale of wage than that they agreed to work for at the time of entry, the original employer has no redress, but becomes immediately liable for a heavy bill, which the Government may at any time thereafter present for expenses incurred in returning these former employees to Mexico.[25]

In his discussion of the World War I program 40 years later, Otey Scruggs summed up its shortcomings as follows:

> The basic weakness of the program was lack of adequate enforcement machinery. Too much reliance was placed on the good faith of the parties involved. In the case of the farmers, most of whom were haunted by the fear of labor shortage, and who had come to regard the use of Mexican labor as a natural right, an appeal to good faith plainly was chimerical. It was equally absurd to have expected workers who came with the thought of leaving the farm for the factory (and there being no penalties for so doing, except deportation), to have scrupulously honored the terms of their contract with the growers. Since good faith alone was insufficient, a more compelling

[24] Annual Report of the Commissioner General of Immigration, fiscal year 1923, p. 28.
[25] Annual Report, fiscal year 1920, pp. 427–428.

agency was needed to enforce the meager sanctions contained in the Secretary's orders. Those orders had directed the Bureau of Immigration, with the assistance of the Employment Service, to make periodic investigations. But this proved to be impractical, for the Bureau simply did not have a border force large enough to take on the added responsibility. Prior to 1924, it had a mounted force of about 60 men whose job it was to patrol the entire length of the 1,500-mile United States-Mexico border.[26]

Scruggs also observed that "the unilateral character of the undertaking also contributed to the problem of enforcement." [27] After some initial opposition, Mexico permitted U.S. recruitment and, by 1918, officially sanctioned the emigration of her workers. According to one source:

> In Mexico there was no shortage of laborers eager to leave for the United States. From the revolution-ravaged economy, many simply headed for the border without contacts of any kind in the United States. So many left that concern began to be expressed in Mexico that her own farms would be undermanned.
>
> Nevertheless, the Mexican government did not stand in the way of emigration. The Revolution had been fought in large part against the system of land tenure, and big farmers did not enjoy the same prestige as did American farmers in the United States. Also, the exodus of Mexicans helped relieve the stress on the war-torn economy, which could not support the population at even the level of the Diaz era. In July, 1918, it was announced that the Mexican government was providing trains for transporting "braceros" to the American border.[28]

However, Scruggs noted that "nothing resembling the type of Mexican inspection force set up during the Second World War to investigate complaints was established." [29] Referring forward to the World War II bracero program, Scruggs observed that between the two wars, "interventionism had given way to the 'good neighbor' " in our Latin American policy:

> In 1917, a unilateral Mexican labor program had been consistent with the American government's approach to hemisphere affairs; in 1942 a unilateral program would have done irreparable damage to a policy based on mutual cooperation. Consequently, when the two governments exchanged notes on a Mexican farm labor agreement on August 4, 1942, it was on a document that contained guarantees against exploitation and provided for joint United States-Mexican enforcement. The subsequent history of the farm labor program can be viewed largely in terms of the conflicting efforts of southwestern farmers to turn the clock

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[26] Scruggs (1960), p. 324.
[27] Ibid.
[28] Kiser, George C., Mexican American Labor, Before World War II. The Journal of Mexican American History, v. II, spring 1972, p. 128. (Cited as Kiser (1972).)
[29] Scruggs (1960), pp. 324–325.

> back to 1917 on the one hand and those of the Mexican government to secure for the workers more and stronger protective guarantees on the other.[30]

Mexican immigration, legal and illegal, reached an unprecedented level during the 1920's. The Mexican immigrant population was estimated by the official American census at 890,746 in 1926, compared to 486,418 in 1920 and 221,915 in 1910. A 1930 analysis by Manuel Gamio notes that the official figures were inexact "since this population is, in part, a transient population. A relatively large part of this population enters and leaves the United States two and even three times a year." [31]

Gamio also noted "the high number of Mexicans who enter the United States illegally every year." [32] The main reasons he cited for illegal immigration in the 1920's were the difficulties, including red-tape and cost, presented by the immigration law, combined with the efforts of smugglers and job contractors who facilitated illegal entry and the location of jobs, and the push-pull factors so frequently cited in analyses of illegal immigration in the 1970's:

> * * * indirectly, but logically and fundamentally, the origin of illegal immigration is to be found in the farmers and ranchers, and railroad, mining, and other enterprises to which Mexican labor is indispensable.
>
> Immigration is not only powerfully drawn from the United States but is likewise propelled by conditions in Mexico. The real impulse began just before 1900, when conditions which it is not necessary to detail here obliged Mexicans to leave their country in increasingly large numbers in search of better wages and conditions.
>
> This immigration developed rapidly and could soon be numbered by the hundreds of thousands. As a result, a large part of the commercial and industrial activity in the frontier cities and states developed by using Mexican labor, and it would now be impossible or exceedingly difficult to continue such enterprises without it. This fact has been proclaimed constantly by employers, who bring to bear their political and financial influence to gain their point, and to combat the existing hostility to immigration.[33]

He concluded that the trend was irreversible: "The propinquity of the two countries and the enormous extent of the boundary make it absolutely impossible to prevent immigration, unless a large army of Mexican and American police were to patrol the line." [34]

Whether or not Mexican migration to the United States would have increased as it did without the World War I program is, of course, debatable. It can be argued that economic conditions in the two countries during the 1920's were sufficient to explain it. On the other hand, Reisler argues that "the temporary admissions program served as a catalyst for augmented immigration." [35] Referring to the official end

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[30] Ibid., p. 326.
[31] Gamio, Manuel. Mexican Immigration to the United States: Chicago, University of Chicago Press, 1930, p. 2. (Reprinted New York, Arno Press, 1969.)
[32] Ibid., p. 9.
[33] Ibid., pp. 11-12.
[34] Ibid. p. 12.
[35] Cited as Reisler (1976), p. 42;

of the World War I program, Kiser argues that far from ending, it continued on an informal basis with tacit government cooperation:

> One pattern that emerges * * * is the consistent political influence of the employers of Mexicans even when casual observation would suggest that these commercial interests were having less and less impact on policymaking. For example, the decision to end the special emergency supply of Mexican labor in 1921 gave the impression that employer interests were losing ground. Yet the great struggle to end the program brought a largely hollow legal victory to opponents of the use of Mexican workers. Even when the formal policy turned against the employers, their interests were still informally accommodated. The government continued to maintain an informal Mexican labor program by simply refusing to apply the immigration laws vigorously and systematically. Far from reducing the number of Mexican workers, the end of the emergency program marked the beginning of a decade which brought Mexican workers to the United States in vastly increased and unprecedented numbers.[36]

The boom of the 1920's was followed by the bust of the 1930's, and supplemental labor was no longer needed, formally or informally. More Mexicans left the United States than entered it during the decade, and many of those who left more or less voluntarily were legally entitled to stay.[37] The mass repatriation of Mexicans was both humiliating and expensive to Mexico, and contributed to the detailed guarantees it demanded in the bilateral agreements which governed the next formal Mexican temporary labor program. This was the bracero program, which lasted from 1942 until 1964.

B. The Bracero Program

The largest single temporary alien worker program in the United States has been the Mexican bracero program. The program lasted for 22 years, from 1942 to 1964, and employed between 4 and 5 million Mexican agricultural workers.

The bracero program falls into three distinct phases: The wartime period, which extended 2 years beyond the end of World War II, until the expiration of the special authorizing legislation in 1947; the post-war transition period from 1948 until the enactment of new authorizing legislation, Public Law 78, in 1951; and the Public Law 78 period, during which the program expanded until 1960, followed by a phase-down until its termination at the end of 1964. Legislation, operations, and program experience during the different phases of the bracero program are discussed below, including consideration of the major issues raised by our lengthy and controversial experience with the program.

1. THE WORLD WAR II PERIOD: 1942–47

During World War II and continuing until the end of 1947, the U.S. Government approved the entry of more than 300,000 foreign agricultural workers, of whom approximately 220,000 came from

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[36] Kiser (1972), p. 136.
[37] Grebler, Leo. Mexican Immigration to the United States; Los Angeles, University of California, 1965, pp. 28–29.

Mexico. Following the enactment of special appropriations for the purpose in April 1943, the Federal Government recruited, transported, and placed the workers with the U.S. farmers at Government expense. The U.S. Department of Agriculture and its affiliated State Agricultural Extension Service were the principal agencies involved in this activity between 1943 and 1947.

a. Overview: Source countries, international agreements and legislation

The labor shortages of World War II abruptly followed the labor surpluses of the depression of the 1930's. As late as 1940, Secretary of Labor Henry Wallace testified before a Senate subcommittee that 1.6 million fewer farm workers were needed than 10 years previously, and that the number of farm workers far exceeded the number who could expect to make a decent living from agriculture.[38]

Between 1940 and 1942 large numbers of rural farmworkers either entered the Armed Forces or left the farms for the higher wages of the growing defense industry. There were increasing complaints of shortages particularly in agricultural areas around defense plants. However, according to a contemporary history, "Many of the reports of shortages in specific areas were based, not so much on the inadequacy of a supply sufficient to maintain full production, as on inability to continue the peacetime methods of employment, with underemployment, and low wages." [39] The domestic farm labor supply was generally considered adequate by government officials prior to the entry of the United States into World War II in December 1941. Requests for supplementary Mexican laborers during 1941 from groups in Arizona, Texas, New Mexico, and California were all denied, the latter at the request of the Governor of California.[40]

This situation changed in 1942. In April 1942 the Immigration Service took the lead in organizing an interagency committee on farm labor which included representatives of the Departments of State, Agriculture, Labor, and Justice, the War Manpower Commission, and other wartime agencies. Their plan was approved in May 1942 and was the basis for the agreement reached with Mexico on July 23, 1942, following a month long deliberation by a Mexican interdepartmental study commission, and intensive U.S.-Mexican negotiations. Although subsequently amended, the agreement served as the basis for the Mexican labor importation during the 1942–47 period.

The U.S.-Mexican agreement took effect on August 4, 1942. Pursuant to this agreement, the first Mexican workers entered at El Paso, Tex., on September 27, 1942, for employment in the sugar beet harvest at Stockton, Calif. This was the beginning of the Mexican bracero program, which continued under various legal authorities until December 31, 1964.

Bahamians entered in 1943 followed shortly by Jamaicans, constituting the origin of the BWI (British West Indies) program which continues in operation today, 37 years later. Bahamian workers were admitted pursuant to an intergovernmental agreement signed March 16, 1943; Jamaicans entered pursuant to an intergovernmental agreement signed April 2, 1943. Other groups entering from the British West Indies pursuant to intergovernmental agreements during the

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[38] Rasmussen, Wayne D. A History of the Emergency Farm Labor Supply Program, 1943–1947. Washington, U.S. Department of Agriculture, Agriculture Monograph No. 13, Sept. 15, 1951, p. 14. (Cited as Rasmussen (1951).)

[39] Ibid.

[40] Ibid., p. 200.

war period included natives of Barbados and British Honduras. Of these groups, the Jamaicans accounted for the largest numbers of foreign workers entering during the war period, second only to the Mexicans.

A breakdown of entries during the war period appears as table 1. While the number of Mexicans entering far exceeded the total number imported during the World War I Mexican program discussed above,

TABLE 1.—FOREIGN FARMWORKERS IMPORTED BY U.S. DEPARTMENT OF AGRICULTURE, 1942–47

Country of origin	1942	1943	1944	1945	1946	1947	Total
Bahama Islands		4,698	3,048	2,100	2,690	2,705	15,241
Barbados			908		3,087		3,995
Canada			1,414	4,055	5,533	7,421	18,423
Jamaica		8,828	15,666	17,291	7,796	1,017	50,598
Mexico	4,189	52,131	62,091	49,457	32,046	19,632	219,546
Newfoundland			1,213	522			1,735
Total	4,189	65,657	84,340	73,425	51,152	30,775	309,538

Source: Rasmussen, A History of the Emergency Farm Labor Supply, 1943–47, U.S. Department of Agriculture, 1951, p. 199.

on the other hand, it is significantly less than the number of Mexicans imported in a single year during the peak years of the bracero program in the second half of the 1950's.

The various formal and informal international agreements which formed a significant part of the basis for the importation of alien workers during the war period provided, with variations, that:

(1) Such laborers would be exempt from selective service;

(2) Such laborers would be exempt from certain requirements of our immigration laws, such as literacy requirements and payment of head tax or other admission charges;

(3) Such laborers would be guaranteed round-trip transportation;

(4) Hours of work and wages would be equal to those of domestic labor in the United States; and

(5) The foreign government would determine the number and types of laborers who could leave that country without adversely affecting its economy.[41]

The first and most detailed of these agreements was the formal diplomatic accord with Mexico in mid-1942. The detailed Mexican-U.S. agreement was the result, in part, of the sensitivity of the Mexican Government due to the large-scale deportation of Mexican nationals from the United States during the depression of the 1930's. This led to the enactment of legislation by the Mexican Government prescribing the conditions under which its citizens could accept foreign employment. The 1942 agreement reflected these conditions as well as the desire of the U.S. Government to protect its own workers from adverse effects due to the importation of foreign labor. These factors are discussed in more detail below.

The agreements with the Bahamian Government and with the British West Indies, in which the Government of Great Britain maintained a direct interest, generally took the form of memoranda of

[41] U.S. Congress. Senate. Committee on the Judiciary. The Immigration and Naturalization Systems of the United States; report, 81st Cong., 2d sess. S. Rept. 1515, 1950, p. 579. (Cited as S. Rept. 1515 (1950).)

understanding drawn up by representatives of the governments involved, rather than the formal diplomatic exchange of notes which governed the Mexican program. Unlike the U.S.-Mexican agreement, they were not extended beyond the end of 1947.

During this period, temporary alien agricultural workers entered under the same legislative authority, regardless of their country of origin in the Western Hemisphere. It was not until 1951 that separate legislation regulating the Mexican bracero program was enacted. As during World War I, temporary farm workers were first admitted during World War II pursuant to the ninth proviso to section 3 of the Immigration Act of 1917 which authorized a waiver of exclusion for inadmissible aliens who were seeking temporary admission. In September 1942, the Attorney General authorized such a waiver for Mexican agricultural workers applying for temporary admission under the terms of the U.S.-Mexican agreement. A certification from the U.S. Employment Service that local workers were unavailable was required as a condition of entry. The ninth proviso was also the authority used in the admission of the first Bahamian and Jamaican workers in 1943 under conditions similar to those imposed in the case of the Mexican workers.

On April 29, 1943, the 78th Congress enacted Public Law 45, authorizing the U.S. Government to temporarily admit "native-born residents of North America, South America, and Central America, and the islands adjacent thereto, desiring to perform agricultural labor in the United States."[42] Public Law 45 was the first of a series of acts referred to as the farm labor supply appropriations acts which, together with the international agreements, formed the basis for the emergency labor supply program operated under direct governmental supervision from April 30, 1943, until December 31, 1947. The various formal and informal intergovernmental agreements were recognized, either directly or indirectly, by the special legislation.

Public Law 45 provided the authority and funds for the recruitment, transportation, and placement of agricultural workers. Among other things, it specified that no funds made available for these purposes

> * * * shall be used directly or indirectly to fix, regulate, or impose minimum wages or housing standards, to regulate hours of work, or to impose or enforce collective-bargaining requirements or union membership, with respect to any agricultural labor, except with respect to workers imported into the United States from a foreign country and then only to the extent required to comply with agreements with the government of such foreign country; *Provided*, That nothing herein contained shall prevent the expenditure of such funds in connection with the negotiation of agreements with employers of agricultural workers which may provide that prevailing wage rates shall be paid for particular crops and areas involved and that shelter shall be provided for such workers.[43]

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[42] 57 Stat. 70, 73.
[43] 57 Stat. 70, 72.

It also exempted foreign workers admitted under its authority from a variety of provisions of the Immigration Act of 1917 including the head tax and other fees, the literacy requirement, the prohibition against the admission of contract laborers, and the requirement of a bond from the employer. The act of February 14, 1944, Public Law 229, reenacted and extended the provisions of Public Law 45, authorizing the admission of temporary workers for agricultural and related employment, as did a series of subsequent acts, ending with legislation enacted on May 26, 1947 (Public Law 80–76; 61 Stat. 109).

Title II of Public Law 229 (Feb. 14, 1944) contained a separate authority and appropriation for the temporary migration of workers from foreign countries in the Western Hemisphere, specifically "pursuant to agreements between the United States and such foreign countries," for employment in the United States, "with industries and services essential to the preservation, marketing or distribution of agricultural products, including the timber and lumber industries." [44] This title was administered by the War Manpower Commission, within the Executive Office of the President, which was dismantled after the war. The authority and funding for this program were subsequently broadened to include "industries and services essential to the war" [45] and extended, the last time by legislation enacted on July 3, 1945 (Public Law 124; 59 Stat. 361). This legislation allowed for the importation of Mexicans for railroad work, which ceased shortly after the war, unlike their importation for agricultural work. A similar pattern had characterized the use of supplementary alien labor for nonagricultural work in connection with World War I.

b. The U.S.-Mexican agreement: Resolution of conflicting interests

The controversy within and between the United States and Mexico leading to the signing of the International Agreement on August 4, 1942, is of particular interest because of the extent to which the conflicting interests of the time resemble as well as differ from present positions regarding the importation of temporary alien labor. The major differences, of course, were the existence of a manpower shortage in the United States resulting from the war, and the fact that both countries viewed the temporary worker program as a vital contribution to the war effort. Mexico declared war on Germany, Italy, and Japan on June 1, 1942.

Otey Scruggs points out that drafting a plan for the recruitment of Mexican nationals by the U.S. interagency committee in the spring of 1942 required the reconciliation of the demands and interests of four major parties, all of whom were consulted in the development of the plan. These were "American labor, the Mexican government, American farmers, and the United States government. This was not easy, for the parties were not in accord on the need for outside help nor on the form the undertaking ought to assume, should the need be determined." [46] Mexican-Americans constituted an additional interest group of major importance. The results of the reconciliation of these and other interests are apparent in the 1942 treaty, as modified in 1943. The discussion

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[44] 58 Stat. 11, 17.
[45] Act of June 28, 1944; Public Law 373, 58 Stat. 547.
[46] Scruggs, Otey M. Evolution of the Mexican Farm Labor Agreement of 1942. Agricultural History, v. 34, July 1960; pp. 141–142. (Cited as Scruggs, Mexican Farm Labor Agreement of 1942 (1960).)

below of the interests of the major parties involved is followed by an examination of the major points of the treaty and its subsequent amendments.

The importation of workers from Mexico had been opposed by U.S. organized labor in 1941, according to Scruggs, because of "fear of the recurrence of the situation after the First World War when Mexicans under contract left the fields and went to the cities to compete with Americans for skilled jobs." [47] Organized labor initially argued in 1941 that there was adequate domestic farm labor, but subsequently agreed not to "obstruct the government's 'food for victory' program, on condition that effective safeguards be devised to protect both Mexican and American workers against exploitation, and that provision be made for the workers' prompt return to Mexico at the end of each crop season." [48]

Objections to the importation of Mexican laborers were also raised by Mexican-Americans, according to Scruggs, for several reasons. Representatives of the Spanish-Speaking People's Congress and the Federation of Spanish-American Voters of California notified Federal officials of their opposition in April 1942, on the grounds that there were insufficient jobs for Mexicans already in the United States. This situation was apparently exacerbated by the fact that Mexican-Americans who had not become citizens were barred from war industry work and thus "feared that a huge inpouring of Mexican nationals would keep farm wages at the notoriously low pre-war levels." [49]

Another reason for Mexican-American opposition to the importation of Mexican laborers was a sensitivity to the adverse effect it might have on their status in the United States, as well as on U.S.-Mexican relations. An official of the U.S. Department of Agriculture described this reaction as follows after an April 1942 meeting with Mexican-American leaders in Los Angeles:

> We find them all working earnestly to swing their people into full cooperation with the American war effort. At the same time they are keenly sensitive to the low-caste position of the Mexican in American society, resentful of the discriminations against the Mexicans, and rather bitter over the long record of exploitation and injustice to which the Mexicans have been subjected in this country. All with whom we talked were very skeptical of the proposals to import Mexican labor; they seemed to feel that such importation would be the beginning of another period of exploitation of the "greenhorns." If our contacts in the Mexican Colony of Los Angeles are at all representative of opinion in Mexico (and the California Mexican leaders are in close touch with affairs in Mexico and make frequent trips there), then importation of Mexican laborers is a very delicate issue from the standpoint of relations with the Mexican people.[50]

The position of the Mexican Government was, characteristically, complex and ambivalent. In response to initial U.S. inquiries in early 1942 about the possibility of contracting Mexican workers, Mexico had

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[47] Ibid., p. 142.
[48] Ibid.
[49] Ibid.
[50] Quoted ibid. Memorandum, Davis McEntire, Bureau of Agricultural Economics, to J. H. Province, Division of Farm Population and Rural Welfare, Department of Agriculture, Apr. 13, 1942.

indicated "that certain guarantees regarding wages and preconditions of employment would be a prerequisite to an agreement." [51] In short, it was clear from the start that Mexico would not consent to a duplication of the World War I program. Experience with transporting hundreds of workers home after that program, as well as with mass repatriation during the depression, had resulted in an insistence by Mexico that any contracting of its nationals be done only on an intergovernmental basis and pursuant to Mexican law. Article 29 of the Mexican Labor Law of 1931 required that foreign employers pay for the round-trip transportation of workers, including depositing bonds in Mexican banks to cover repatriation costs, and that the workers be paid fixed wages according to contracts approved by the Mexican authorities.

The presentation of a U.S. plan intended to meet Mexican requirements was followed by a month-long deliberation within Mexico before the initial agreement to the first treaty in July 1942. On the negative side, according to Richard Craig, Mexico doubted the existence of a U.S. labor shortage, regarding "the anguished cries of growers as just another effort in search of cheap labor." It was sensitive about both the past return of its impoverished nationals and about their future employment in "particular discrimination-prone southern states;" and it was concerned about manpower considerations of its own. On the positive side, the intergovernmental program presented by the United States appeared to guarantee Mexico a strong voice; the knowledge gained by the braceros would be beneficial for Mexican agriculture; the program would be a valuable contribution to the war effort; and the money they earned would be valuable to the individual workers and the nation, as would continued good relations with "the consumer of a potentially large amount of Mexican raw materials during the war." [52] Taking a long view of the program, Craig concluded:

> With the possible exception of the Catholic church, much of the opposition to bracero contracting on the part of Mexican interest groups and political parties was *pro forma* and to be expected under the circumstances. On balance, Mexico acquiesced to the bracero program because its advantages far outweighed its disadvantages.[53]

Another factor influencing the Mexican and U.S. Governments was the problem of the illegal entry into the United States of Mexican workers—or wetbacks, as they were known at the time. According to one student of the period, "the uncontrolled entry of 'wetbacks' between 1942 and 1954 compelled the United States and Mexico to negotiate treaties which both parties hoped would discourage this illegal flux," [54] and this goal was a major factor in determining the actual provisions of the series of agreements between the two countries:

> Because of the past experience of her nationals with discrimination and poor working conditions in the United States, Mexico insisted that considerable measures of protection be

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[51] Rasmussen (1951), p. 201.
[52] Craig, Richard B. The Bracero Program, Interest Groups and Foreign Policy. Austin, University of Texas Press, 1971, pp. 41–42. (Cited as Craig (1971).)
[53] Ibid., p. 23.
[54] Copp, Nelson Gage. "Wetbacks" and *Braceros:* Mexican Migrant Laborers and American Immigration Policy, 1930–1960. Dissertation. Boston University Graduate School, 1963, p. 53. (Cited as Copp (1963).)

> inserted in the agreements concerning the importation of Mexican labor into the United States. The official position of Mexico was that she was not anxious to see her nationals leave for any great length of time and did not want to create a labor shortage in her own country. She also was trying to discover means of stopping or at least controlling the tremendous flow of "wetbacks" to the United States. The United States wanted a flexible agreement which would not place a burden on prospective employers. Under such an agreement and arrangement there would be no necessity for Mexicans to enter illegally. Both sides intended to create measures for control of "wetbacks." [55]

Experience with illegal immigration during the wartime period is discussed below.

The position of American farmers regarding the importation of Mexican workers was at odds with Mexico's regarding that country's participation in the regulation of the program. U.S. farmers generally wanted the U.S. Government to lift the existing legal restrictions against immigration from Mexico, and allow a return to the World War I program. According to Scruggs, "that program was made the basis for a proposal drafted by representatives of the Texas, Arizona, and California Farm Bureaus and presented to the interagency committee in May 1942." [56] U.S. farmers were particularly opposed to the wage and hour provisions of the final agreement reached by the United States and Mexico, which they denounced as "socialistic." [57] Quoting from Scruggs, "the growers disliked intensely the guaranties in the agreement, especially the provision of an hourly minimum of 30 cents, correctly fearing that the safeguards were part of an effort to bring all farm labor, domestic as well as foreign, within the orbit of existing federal labor legislation. For these reasons, only a handful of growers—none from Texas—participated in the program in 1942." [58] Grower opposition to the 1942 agreement played a major role in the ensuing problems with illegal entry, discussed below.

The position of the U.S. Government in the negotiation of the 1942 agreement appears to have been primarily that of mediator among the other conflicting interests. Once the Federal Government was convinced in the spring of 1942 of the reality of a labor shortage, it was concerned that the importation of Mexican workers be done in a manner which would minimize the negative impact of the imported workers on the wages and working conditions of U.S. workers similarly employed, as well as on the foreign workers themselves. Their exploitation would inevitably lead to an exploitation of domestic workers, as well as have a damaging impact on U.S.-Mexican relations. The U.S. State Department which later became one of the bracero program's staunchest supporters, was initially skeptical about the program. Quoting Richard Craig, "The State Department's primary concern was the possibility that the fledgling Good Neighbor Policy might

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[55] Ibid., pp. 53–54.
[56] Scruggs, Mexican Farm Labor Agreement of 1942 (1960), p. 143.
[57] Ibid., p. 149.
[58] Scruggs, Otey M. Texas and the Bracero Program, 1942–1947 (August 1963). Mexican workers in the United States, ed. George and Martha Kiser, Albuquerque, University of New Mexico Press, 1979, pp. 85-86. (Cited as Scruggs, Texas and the Bracero Program (1963).)

suffer a severe setback if Mexican nationals were exploited or discriminated against during their stay in this country." [59]

The agreement which resulted from the negotiation of the various interests discussed above allowed for the admission of the Mexican agricultural workers, as requested by U.S. growers, but not on the terms that they wanted. The 1942 agreement afforded much greater protection to both U.S. and Mexican workers, and a greater role for the Mexican Government than had the World War I program. According to Carey McWilliams, writing in 1948, "the agreement represented a notable advance over the 1918 experience and it also demonstrated that a migratory labor movement can be planned and rationalized." [60]

The first "Agreement between the United States of America and Mexico respecting the temporary migration of Mexican agricultural workers" was signed July 23, 1942, and made effective by an exchange of notes signed August 4, 1942.[61] The conditions under which the Mexican workers were to be employed were prefaced by four "general provisions," summarized below:

1. Mexican contract workers were exempted from military service.
2. They were not to suffer discriminatory acts of any kind.
3. They were entitled to "the guarantees of transportation, living expenses and repatriation established in Article 29 of the Mexican Labor Law."
4. They were not to be employed to displace other workers, or for the purpose of reducing previously established rates of pay.

Other significant provisions of the agreement are listed briefly below:

1. The word "employer" referred to the Farm Security Administration of the U.S. Department of Agriculture; the "sub-employer" was the farm owner or operator.
2. Contracts, to be written in Spanish, were to be entered into by the U.S. Government and the worker under the supervision of the Mexican Government; the U.S. Government, or employer, was then to enter into a contract with the sub-employer, the U.S. farmer.
3. Transportation and living expenses from the place of origin to and from the place of employment were to be met by the U.S. Government which, under the original agreement, was to be reimbursed in whole or part by the individual farmers.
4. The workers were to receive the same wages as those paid for similar work to other agricultural laborers in the same region, except that it could not be lower than 30 cents an hour. Piece rates were to be set to enable average workers to earn the prevailing wage.
5. Any change from the type of agricultural labor for which a worker was engaged could only be made with the express approval of the worker and the Mexican Government.
6. Workers were to be free to obtain articles for their personal consumption wherever it was most convenient for them.

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[59] Craig (1971), p. 40.
[60] McWilliams, Carey. North from Mexico. Philadelphia. J. B. Lippincott Co., 1949, p. 267. (Cited as McWilliams (1949).)
[61] 56 Stat. 1759; EAS 278.

7. Housing conditions, sanitary and medical conditions, and occupational insurance were to be identical to those provided other agricultural workers in the same localities.

8. Groups of workers could elect their own representatives to deal with the employer, provided that the representatives were working members of the groups. Mexican consuls were to make every effort to extend all possible protection to workers within their respective jurisdictions.

9. Workers were guaranteed employment for at least 75 percent of their contract, and were to be paid a subsistence allowance of $3 a day for time unemployed during that period. For the remaining 25 percent of the period, they were to receive subsistence for any time spent unemployed at the same rate as that paid U.S. farm laborers.

10. The U.S. Government was to deposit money contributed by the workers in a Rural Savings Fund established for them until the transfer of the sums to the Mexican Agricultural Credit Bank. The Farm Security Administration was to give priority treatment to exportation permits for shipment to Mexico of agricultural implements purchased through the Mexican Agricultural Credit Bank.

11. The number of workers needed would be indicated from time to time by the U.S. Government to the Mexican Government which, in turn, would determine the number which could leave the country without detriment to the economy.

12. Either government was entitled to renounce the agreement following 90 days advance notice.

It will be noted that a number of the guarantees provided in the initial agreement were somewhat hollow, since they were contingent upon benefits which at that time were not generally provided domestic agricultural workers. This was generally true of subsistence payments for unemployment and occupational insurance, as well as on-farm housing and medical facilities in many localities. Scruggs notes that some of the provisions represented efforts "to cloud over a conflict that could not for the moment be resolved." [62]

While provision was made in the treaty for the entry of the families of the Mexican workers, including a prohibition against work by children under 14, no family members were ever imported. According to one commentator, "the United States tried in vain to persuade Mexico to let the worker's family accompany him. Not being able to be with his family was one reason why a worker often became dissatisfied, left his employment, and asked to be repatriated." [63]

At the request of the Mexican Government, the treaty was renegotiated in the spring of 1943 resulting in a new agreement effected by an exchange of notes signed in Mexico City, April 26, 1943.[64] The major changes were:

1. The guarantees of Article 29 of the Mexican labor law relating to transportation, living expenses, and housing, which previously had been incorporated by reference, were specifically spelled out.

2. Workers paid at piece rates were required to be paid a minimum of 30 cents an hour.

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[62] Scruggs, Mexican Farm Labor Agreement of 1942 (1960), p. 148.
[63] Copp (1963), p. 54.
[64] 57 Stat. 1152, EAS 351.

3. Changes in locality, as well as changes in type of employment, required the express approval of both the Mexican worker and Government.

4. Hygienic lodgings were to be furnished without cost to the workers.

5. The requirement that workers were to be paid a subsistence allowance of $3 a day for time unemployed during 75 percent of the contract period was retained. In addition, it was required that if unemployment during the remaining 25 percent of the time was not due to their unwillingness to work, they were also to receive lodging and subsistence for that period without cost to them.

The International Agreement of August 4, 1942, as modified by the International Agreement of 1943, formed the basis for the Mexican program during the war years, although there were further amendments to the agreement as well as modifications of the individual work contracts. For example, in 1946 the agreement was informally amended to raise the minimum guaranteed hourly wage from 30 cents to 37 cents, or $33.60 per 2-week payroll period. In 1947, the agreement was modified to provide that food must be provided to the workers at cost, not to exceed $1.50 per day.[65]

c. Major issues: Discrimination and illegal entry

The two major problems during the wartime bracero program, discrimination and illegal entry, were not unrelated. Mexico refused to allow its nationals to enter Texas during the wartime period because of discriminatory treatment by that State, with the result that many entered the State illegally. According to Scruggs, Mexico gradually abandoned its ban against braceros in Texas in the years after 1947 primarily because of the magnitude of the illegal migration problem, which was of considerable concern to Mexico. "By 1947 the mounting volume of unlawful migration overshadowed all other border problems." [66] However, he also noted:

> Mexico's policy of using the braceros as a lever to force Texas to take steps to end discrimination against Mexicans was not devoid of results. More than any other factor, it was responsible for the creation of the Good Neighbor Commission, which in 1947 became a permanent agency of the Texas government. Moreover, the publicity attending Mexico's stand, and the work of the Good Neighbor Commission, helped bring out into the open a problem long in need of searching examination.[67]

In a similar vein, Carey McWilliams wrote, "one of the conspicuous advantages of the farm-labor importation agreement of 1942 was that it gave the Mexican government a firm basis on which to protest acts of discrimination against Mexicans in the borderlands and also provided a means by which these protests could be backed up." [68]

The problem of illegal immigration was a major one for more than half of the bracero program's 22-year history. It is of particular interest because then, as now, a principal reason for both U.S. and

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[65] Agreement with Mexico respecting the temporary migration of Mexican agricultural workers, supplementing the agreement of Aug. 4, 1942, as revised Apr. 26, 1943, effected by exchange of notes at Mexico City Mar. 25, 1947, and Apr. 2, 1947; 61 Stat. 3738, TIAS 1710.

[66] Scruggs, Texas and the Bracero Program (1963), p. 94.

[67] Ibid., p. 95.

[68] McWilliams (1949), p. 269.

Mexican interest in a large-scale legal temporary worker program was as an alternative to and means of control of the existing large-scale illegal program. In his historical analysis entitled, "The United States, Mexico, and the Wetbacks, 1942–1947," Scruggs notes that, "the bracero program, instead of diverting the flow of wetbacks into legal channels, as Mexican officials had hoped, actually stimulated unlawful emigration." [69] It did this by attracting workers northward in greater numbers than could be accommodated by the legal flow, limited initially by Mexico to 50,000 a year. The situation was exacerbated on the U.S. side by the fact that Texas was barred from importing braceros, as well as by the general grower dislike of the worker protections required under the formal contracts. Many U.S. farmers were willing accomplices in the illegal entry of the Mexican nationals, a fact recognized by Mexico in its recommendation that the United States enact sanctions against employers who hired illegal entrants.

In a communication with the American Embassy on October 8, 1946, Mexican Foreign Minister Tello wrote, "Without presuming to suggest any action to the Government of the United States, yet if the problem were attacked at its economic source, imposing sanctions on American employers who employ illegal entrants, the result would promptly come about that Mexican workers would not in the future embark upon a venture made both difficult and unprofitable." [70] Quoting from Scruggs:

> American officials were unimpressed and even annoyed by the foreign minister's arguments * * *. Yet, there could be no gainsaying the cogency of the Mexican contention that blame for illegal entry rested primarily with employers and with the United States as long as it refused to enact penalty legislation. Indeed, many of the same persons who regarded the foreign minister's note with disfavor saw some merit in the idea of sanctions but hesitated to promote it for fear of arousing the wrath of the farm bloc.[71]

An attempt was made in 1947 to arrange for the legal contracting by U.S. employers of 100,000 illegal entrants as braceros. This was of limited success, principally because the U.S. growers were unhappy with the terms of the contract, which was unilaterally drafted by the Mexican Government due to the refusal of the U.S. Government to become directly involved. "Disgruntled, the farmers set out to wreck the undertaking," and by mid-September, only 31,000 Mexicans had had their status legalized, and even their contracts were often violated. Furthermore, as Mexico had feared, this measure also increased the northward flow of workers.[72]

By the end of 1947 the problem of illegal Mexican immigration to the United States was without a solution because, according to Scruggs, neither government had been sufficiently interested in solving it. Quoting his analysis:

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[69] Scruggs, Otey M. The United States, Mexico, and the Wetbacks, 1942–1947. Pacific Historical Review, v. 30, May 1961; p. 151. (Cited as Scruggs, United States, Mexico, and Wetbacks (1961).)
[70] Ibid., p. 157.
[71] Ibid., p. 158.
[72] Ibid., p. 161.

To be sure, Mexican policy was greatly influenced by internal politics. As an American participant said of the bilateral conference of early 1947: "The discussions seemed to reveal that the Mexican attitude was prompted more by intent to present to the public evidence of efforts to improve the lot of the farm workers than by anything else." At the same time, however, Mexican officials earnestly believed the problem to be largely an American one, requiring American solutions, and that justice dictated that the wealthy United States and not their impoverished country should police the 15-hundred mile international boundary.

Clearly, most of the effort toward a permanent solution would have had to come from the United States. The United States could not plead poverty; neither could it in all honesty claim a monopoly of public virtue. The border patrol, though more active than before the war, was kept woefully undermanned and was under constant pressure from farm interests to temper duty with expediency. Similarly, fear of antagonizing the farm bloc prevented government officials from attempting to mobilize public sentiment in favor of legislation to penalize employers of wetbacks.[73]

In short, the bracero program by itself did not prove to be a solution to the problem of large-scale illegal entry from Mexico. On the contrary, as it was administered during the early stages, the existence of the bracero program appeared to make the problem worse. It was not until sharply increased enforcement measures were combined with a greatly expanded program that it was possible to divert most of the illegal flow into legal channels. However, as discussed below, both these measures were effected at a considerable price, in terms of the apparent adverse effect on domestic agricultural workers, stemming from the expanded program, and the ill will created particularly in the Mexican-American community by Operation Wetback.

d. Principal areas and crops, 1942–47

While 24 States used bracero workers during the period 1942–47, approximately half of the workers were employed in California.[74] According to the President's Commission on Migratory Labor, California employed 63 percent of the total Mexican workers during 1945 and as much as 90 percent of the total during the period January–April. Washington, Idaho, and Oregon were the other major users of braceros during 1945; combined with California, they accounted for 78 percent of the total employed during that year.[75] Substantial numbers were also employed during the wartime period in Arizona, Colorado, Iowa, Michigan, Minnesota, Montana, Nebraska, North Dakota, Utah, and Wisconsin.

Braceros were used during the wartime period in cotton, sugar beets, fruits, and vegetables. In 1944 they harvested an estimated $432 million worth of crops, and almost $5 million was credited to their

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[73] Ibid., p. 163.

[74] U.S. Department of Labor, The Admission of Aliens Into the United States for Temporary Employment, in Study of Population and Immigration Problems, Special Series No. 11, House Judiciary Committee, Subcommittee No. 1, 1963, p. 32. (Cited as Labor Department report (1963).)

[75] U.S. President's Commission on Migratory Labor, Migratory Labor in American Agriculture. Washington, U.S. Government Printing Office, 1951, pp. 39–40.

savings accounts under the 10-percent savings deduction provision of the international agreement.[76]

Alien contract farm labor, largely consisting of Mexicans, accounted for approximately 2 percent of all hired farm labor during the war.[77] It will be noted from table 2 that the wartime use of the braceros was generally the lowest during the 22-year history of the program.

2. TRANSITION PERIOD: 1948–51

With the lapse of the special wartime legislation at the end of 1947, the Mexican program continued to be regulated by international agreement at the specific request of the Mexican Government, in contrast to the British West Indies (BWI) and other temporary worker programs. During the period 1948–51, the importation of workers from Mexico proceeded under a frequently revised agreement, and for a particularly stormy period in 1948–49, under no treaty at all. During this postwar period, Mexican temporary workers were admitted under the ninth proviso, as were other temporary workers, and clearance was required from the U.S. Employment Service. In contrast to the war period, the U.S. employer paid all transportation and recruitment expenses for the braceros, and the U.S. employer, rather than the U.S. Government, was the contractor.

While apparently preferable to U.S. growers, this arrangement was much less satisfactory to the Mexican Government, and of concern to our State Department because of its potential for damaging U.S.-Mexican relations. Quoting from a U.S. Labor Department history of the bracero program, "The Mexican Government expressed concern about what it considered to be inadequate compliance measures, methods for determining the prevailing wage rate, and the lack of formal Government participation in the program as a guarantor of employers fulfilling the contracts." [78]

The role of the Department of Agriculture in the administration of the foreign farm labor program ceased with the end of 1947. Farm employment functions, including the dual role of recruiting foreign workers and protecting domestic workers from adverse foreign competition, reverted to the U.S. Employment Service, which had briefly performed these functions prior to the enactment of Public Law 45 in 1943. The responsibilities of the U.S. Employment Service in the administration of the farm labor program were described as follows in a 1949 communication from the Federal Security Agency, of which it was then a component:

> Under the present arrangement the United States Employment Service, which has the responsibility for maintaining a farm-placement service, makes the certifications of the unavailability of domestic labor to the Commissioner of Immigration and Naturalization. The availability or nonavailability of domestic labor is ascertained by a clearance system carried out through the facilities of the approximately 1,800 local public-employment offices operated pursuant to the provisions of the Wagner-Peyser Act. * * *

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[76] Labor Department report (1963), p. 32.
[77] Fuller, Varden. Labor Relations in Agriculture, Institute of Industrial Relations, University of California, Berkeley, 1955, pp. 44–45.
[78] Labor Department report (1963), p. 36.

> In determining the available supply of domestic labor, with the integration of the Farm Placement Service into the United States Employment Service, it can draw on the registers of unemployed industrial workers and students, many thousands of whom work on farms on a seasonal basis. * * *
>
> If domestic labor is to be protected, it is imperative that any program for the importation of foreign workers be completely coordinated with the public employment service program.[79]

In July 1949 the Senate Judiciary Committee on Immigration held a hearing on S. 272, permanent legislation outside the Immigration Act of 1917 which would in effect have perpetuated the legislative authority under which the emergency farm labor program operated during the war period. The bill, which was not reported by the committee, would have transferred labor certification authority to the Secretary of Agriculture, and would have exempted temporary agricultural workers from the Western Hemisphere and adjacent islands from a number of provisions of the Immigration Act of 1917.

According to the testimony, the bill had been prompted not by difficulties with the labor certification process—the impetus for related legislation offered, also unsuccesfully, in 1965—but because of "the conflict between the farmers and the Immigration and Naturalization Service" regarding the regulations governing the importation of Mexican workers.[80] The situation was aggravated by difficulties in renegotiating the International Agreement with Mexico.

The bill was opposed by the Justice Department, which argued that "legislation of this type should be temporary rather than permanent and * * * should conform fundamentally with the established immigration policy of this country." [81] It was also opposed by the Federal Security Agency, on the grounds that, "if domestic labor is to be protected, it is imperative that any program for the importation of foreign workers be completely coordinated with the public employment service program." Although the State Department also opposed the bill, it noted that "there may be some need for clarification of the statutory authority under which foreign workers are admitted temporarily for employment in the United States agricultural activities." [82] While this bill did not receive action beyond the hearings stage, both temporary and permanent legislation clarifying the statutory authority for the admission of temporary workers was enacted in 1951 and 1952, as discussed below.

A report issued prior to the enactment of the first of these laws, Public Law 78,[83] in March 1951 by President Truman's Commission on Migratory Labor, was critical of the postwar administration of the alien contract labor program. Specifically, the Commission criticized the administration of the Mexican segment of the program in terms of the failure of the responsible U.S. Government agencies to adequately

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[79] U.S. Senate. Committee on the Judiciary. Admission of Foreign Agricultural Workers. Hearings on S. 272, 81st Cong., 1st sess., July 12, 1949. Washington, U.S. Government Printing Office, 1951, pp. 7–8. (Cited as Senate Judiciary 1949 hearings.)

[80] Ibid., p. 2.

[81] Ibid., p. 5.

[82] Ibid., pp. 7–8.

[83] Act of July 12, 1951; 65 Stat. 119.

protect domestic farm labor. Its conclusions in this regard were based largely on an examination of wage rates in the occupation (cotton picking) and States (California during the war; Texas, New Mexico, and Arkansas after the war) most heavily impacted by Mexican workers. They found that "Changes in wages in the principal areas of employment and the principal crop of employment have been inverse to the numbers of contract Mexicans." [84] The Commission generally concluded that "alien labor has depressed farm wages and, therefore, has been detrimental to domestic labor." [85]

Considering the program in the context of national immigration policy, the Commission was equally critical:

> Thus, temporary foreign laborers passing in and out of this country with little restriction have come to substitute for a supply subject to stringent numerical restrictions, thereby furnishing the very competition to American labor that it is the purpose of the immigration law to prevent.
>
> This undermining of national policy stands out more clearly in that it has been the negotiators for foreign governments, notably of Mexico, rather than our own representatives, who have secured reasonable limitation of numbers and some protection to labor standards. While their motive is primarily to protect the standards of their own nationals working in the United States, the effect of their concern, fortunately, is also to help sustain the tenets of American policy. The contrast in this curious difference of attitudes is heightened by the fact that through the negotiations of their governments, foreign laborers have actually achieved, in most instances, better living and working conditions than domestic workers whose protection is a main concern of American immigration law.[86]

The responsible U.S. administrative agencies, rather than the U.S. employers or the braceros themselves, were the primary objects of the Commission's criticism. Thus, the passage quoted above is preceded by the following observation:

> * * * official vigilance for the protection of living and working standards of alien farm laborers was largely abandoned in the postwar phase. Responsible United States administrative agencies practically ceased to exert effective effort to preserve the requirements of national immigration policy. The same ineffectiveness or laxity that undermined protective standards in the contract spread also to the official scrutiny of the number of foreign laborers that employers claimed they needed.[87]

The first recommendation by the President's Commission on Migratory Labor on the subject of alien contract labor pertained to the regulation of farm labor importation by intergovernmental agreements, with the primary contracting handled by the governments as it had been during the wartime period.

We recommend that:

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[84] U.S. President's Commission on Migratory Labor, Migratory Labor in American Agriculture, Washington, 1951, p. 58.
[85] Ibid., p. 59.
[86] Ibid., pp. 64–65.
[87] Ibid., p. 64.

> Foreign labor importation and contracting be under the terms of intergovernmental agreements which clearly state the conditions and standards of employment under which the foreign workers are to be employed. These should be substantially the same for all countries. No employer, employer's representative or association of employers, or labor contractor should be permitted to contract directly with foreign workers for employment in the United States. This is not intended to preclude employer participation in the selection of qualified workers when all other requirements of legal importation are fulfilled.[88]

The question of illegal entrants was of paramount importance during this period and was characterized in a 1949 State Department publication as "in many respects * * * the most formidable problem confronting the United States and Mexican governments in connection with the migratory labor program." [89] While then, as now, the number present in the country was unknown, it was "generally conceded that it substantially exceeds the number brought in legally under the formal program," with estimates ranging from 100,000 to 400,000.[90]

The process of legalizing the illegals which began in 1947, initially at the suggestion of Mexico, continued through the postwar period and was described by the President's Commission on Migratory Labor in early 1951 as "the dominant feature of the Mexican alien farm-labor program not only for 1947 but also in the years since." [91] Further:

> For the 3 years, 1947–1949, the Mexican farm-labor program in summary amounts to this: 74,600 Mexican nationals under contract were brought from the interior of Mexico; 142,000 wetbacks already in the United States were legalized by being put under contract. Legalization of wetbacks occurred again in 1950. Meanwhile, the accelerated wetback traffic continued unabated.[92]

The process of legalizing the illegals took a variety of forms over the years and proceeded both under the auspices of and outside of existing legislation and international agreements. It was deplored by the President's Commission on Migratory Labor, which recommended that, "The Department of State should negotiate with the Government of Mexico such a workable international agreement as will assure its operation as the exclusive channel for the importation of Mexican nationals under contract, free from the competition of illegal migration." [93] Mexico was also increasingly concerned about the continuing high level of illegal immigration, which it viewed as something of a diplomatic embarrassment and also as a form of unilateral contracting by U.S. employers.

In short, the brief period between the lapse of the special wartime legislation at the end of 1947 and the enactment of Public Law 78 in July 1951 was a difficult one for the Mexican farm labor program. The problem of illegal migration continued during the period, combined with the additional problems of Mexican displeasure with the mechanics

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[88] Ibid., p. 66.
[89] Goott, Daniel. Employment of Foreign Workers in the United States Agriculture. Department of State Bulletin, v. 21, July 4, 1949, p. 45.
[90] Ibid.
[91] President's Commission on Migratory Labor (1951), p. 38.
[92] Ibid., p. 53.
[93] Ibid., p. 66.

of the program as it was then operating, and indications of its adverse impact on U.S. workers.

Significantly, however, neither the President's Commission on Migratory Labor nor the earlier comprehensive study of immigration law and policy by the Senate Judiciary Committee recommended the termination of the Mexican temporary worker program, perhaps in part because of the imminence and outbreak of the Korean war. The key recommendations of the Commission on Migratory Labor have been cited above. Writing in the spring of 1950 the Senate Judiciary Committee found "that the agricultural labor supply in the United States, particularly in the Southwestern states, requires supplementation," and recommended that "provisions should be made in permanent legislation which would permit the admission of temporary agricultural labor in a nonimmigrant classification when like labor cannot be found in this country." [94] While legislation implementing this recommendation was enacted in 1952, it was overshadowed in importance by temporary legislation enacted in 1951 which remained the basis for the Mexican bracero program until its termination at the end of 1964.

3. THE BRACERO PROGRAM UNDER PUBLIC LAW 78: 1951–64

Legislation authorizing the terms and conditions of the Mexican worker program passed the Senate by voice vote on May 7, 1951, and the House by a rollcall vote of 240–139 on June 27, 1951, and was signed into law as Public Law 78 on July 12, 1951. It was enacted in response to the manpower shortage resulting from the Korean war, concern about the insufficient protection provided domestic workers, and Mexico's dissatisfaction with the terms of the 1949 agreement governing the temporary export of its workers. A Truman administration bill had been introduced which, among other things, would have provided more explicit protection for domestic workers, requiring that an employer offer to domestic workers "the same conditions of employment as he offers to * * * foreign workers." Despite objections from the Labor Department, President Truman reluctantly signed the alternative measure, which included no such assurances.

An amendment to the Agricultural Act of 1949, Public Law 78 evolved from legislation (S. 984, H.R. 3048, 82d Cong.) originally introduced by Senator Allen J. Ellender (D.-La.) which, he indicated, "authorized the Government to carry out its part of the agreement reached on the importation of farm agricultural workers at Mexico City in February [1951]." [95] Quoting from the Senate report on the genesis of the legislation enacted as Public Law 78:

> As an alternative method to the recruitment of farm workers in Mexico by private employers and subsequent posting of compliance bonds, it was suggested at the conference that an agency of the United States recruit such workers and that the Government of the United States guarantee compliance with the individual work contract. It was understood that the United States Government is not now authorized to undertake such a program. The United States

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[94] S. Rept. 1515, 81st Cong., 2d sess. (1950), p. 586.
[95] U.S. Senate. Committee on Agriculture and Forestry. Farm Labor Program. Hearings, 82d Cong., 1st sess., 1951, p. 8.

> delegation agreed to have such legislation introduced in the Congress, and since its enactment would require time for following legislative procedure, the Mexican Government agreed to continue the present international agreement until June 30, 1951.[96]

During debate, the bill had the strong support of farm employers' organizations. Dissenters included the Farmers Union, on the grounds that the bill was not in the interest of small farmers, and farm employers from the Northwest, who were concerned about the transportation costs and wanted a reception center established by the Government in the interior of the United States as well as at the border.

As enacted, Public Law 78 was restricted in its application to "agricultural workers from the Republic of Mexico." However, as originally introduced, the bill applied to "agricultural workers within the Western Hemisphere." The omission of the British West Indies (BWI) and other foreign temporary worker programs from the purview of the legislation was done at the request of U.S. employers who argued that the existing arrangements were satisfactory to all concerned.

As enacted on July 12, 1951, Public Law 78 established the basic framework under which the Mexican bracero program operated until the mid-1960's, as refined by subsequent amendments and international agreements. Public Law 78 authorized the Secretary of Labor to take certain steps to recruit and transport Mexican workers, subject to the following restrictions:

> Section 503. No workers recruited under this title shall be available for employment in any areas unless the Secretary of Labor has determined and certified that (1) sufficient domestic workers who are able, willing, and qualified are not available at the time and place needed to perform the work for which such workers are to be employed, (2) the employment of such workers will not adversely affect the wages and working conditions of domestic agricultural workers similarly employed, and (3) reasonable efforts have been made to attract domestic workers for such employment at wages and standard hours of work comparable to those offered to foreign workers.

Among other things, the legislation in combination with the revised 1951 International Agreement which followed it, provided that the U.S. Government establish and operate reception centers at or near the Mexican border; provide transportation, subsistence, and medical care from the Mexican recruiting centers to the U.S. reception centers; and guarantee performance by employers in matters relating to transportation and wages, including all forms of remuneration.

U.S. employers were required to pay the prevailing wages in the area, and to guarantee the workers employment for three-fourths of the contract period. Additionally, they were required to provide the workers with free housing and adequate meals at a reasonable cost, and they were responsible for the round-trip cost of transportation to the U.S. Government-operated reception centers. They were also required to reimburse the government for essential expenses of the program, including penalties for workers not returned to the reception centers.

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[96] S. Rept. 214, 82d Cong., 1st sess. (1951), p. 3.

In short, the Mexican labor program was self-supporting under Public Law 78, except for compliance activities and certain executive functions. This was in contrast to the wartime period, when the entire cost of the importation of Mexican farmworkers was borne by the U.S. Government. The funds for payment of the expenses incurred in recruiting Mexican workers under Public Law 78 were met from the farm labor supply revolving fund, maintained by fees paid by employers for contracting Mexican workers, in addition to round-trip transportation costs to the border.

According to a 1963 Labor Department report, "The operation of the Mexican labor program has remained basically the same throughout the life of P.L. 78." [97] A brief general description of certain phases of program operations under Public Law 78 follows.[98]

Soon after the legislation was enacted, an agreement was negotiated by the Secretary of Labor and the State employment security agencies providing that the State agencies would assist the Secretary in recruiting domestic farmworkers and determining if they were available, pursuant to section 503 of Public Law 78, quoted above. Upon a showing that domestic workers were not available, U.S. employers were authorized to employ Mexican workers.

The Mexican workers were recruited from the interior of Mexico by the Mexican Government according to its own regional allocations, based on advance estimates of U.S. needs The potential workers were interviewed by U.S. officials at migratory stations in the interior of Mexico, at an average of 280 miles from the border. Following medical examinations and certification for admission as temporary agricultural workers, the potential workers were given conditional entry permits and proceeded to the reception centers operated by the U.S. Government at the border. Transportation and subsistence costs from the interior to the border were paid by the U.S. Government, which was reimbursed from the farm labor revolving fund, supported by the participating employers who paid contracting fees of up to $15 per worker.

The five reception centers at the U.S. border were operated by the U.S. Department of Labor, with the participation of the Public Health Service and the Immigration and Naturalization Service and a Mexican representative. The contracting was done at the reception centers either by individual employers or associations, following a group briefing of the workers on the jobs currently being offered. When an agreement was reached between a worker and an employer, a contract was signed by both and countersigned by representatives of the two governments. Contracts were generally limited to a period of 6 months. Under the international agreement, the provisions of the contracts relating to payments of wages and furnishing of transportation were guaranteed by the U.S. Government in the event that the employer failed to meet his obligations.

Transportation from the border reception centers to and from the jobs was arranged for and paid by the employers. Following their

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[97] Labor Department report (1963), p. 41.

[98] The following account is based primarily on the 1963 Labor Department report (pp. 41–42) and a summary of a 1957 description by a Labor Department official contained in Spradlin, T. Richard, The Mexican Farm Labor Importation Program—Review and Reform, part I. George Washington Law Review, v. 30, October 1961, pp. 88–91.

return to the reception centers, repatriation and return to the interior of Mexico was the responsibility of the U.S. Government, which again was reimbursed from the revolving fund.

The legislation, international agreements, and individual work contracts provided the temporary Mexican workers with a series of guarantees and assurances relating to their transportation and housing, insurance, payment of prevailing wages, and minimum hours of guaranteed work which were not generally available to most U.S. agricultural workers. Prior to the enactment of Public Law 78, it was argued that the assurances concerning the wages and working conditions made to the foreign workers, which were designed at least in part to avoid adverse effect on domestic workers, would have the practical effect of giving foreign workers much greater protection than was provided domestic workers. Thus, during the course of the debate on Public Law 78, the Labor Department argued that domestic workers should be provided with the same benefits as those provided foreign workers, including free transportation, housing and basic medical care. Congressman W. R. Poage (D.-Tex.) the vice chairman of the House Committee on Agriculture, argued against this position as follows:

> It seems to me that this very provision is one of the greatest safeguards that you can provide for American labor. If it, in fact, costs the employer more to bring in foreign labor, then no matter what kind of laws you write he is not going to bring in foreign labor, as long as American labor is cheaper.[99]

The exact extent of the cost differential is not clear. For instance, under the terms of Public Law 78, U.S. employers were not required to post bonds, and the workers were also exempt from both social security and income tax withholding provisions.

The issue of protecting domestic workers from adverse competition was a major concern during the life of Public Law 78. It increased in political importance toward the end of the 1950's, when a U.S. Government report found that the Department of Labor had had limited success in protecting the domestic work force from being adversely affected by the importation of the Mexican workers. This issue is considered below as a central concern of the second phase of the bracero program under Public Law 78.

(a) 1951–59: Bracero program expansion

The use of Mexican workers under the bracero program was considerably more extensive during the 1950's than it had been during the wartime period. Statistics on the admission of Mexicans, British West Indians, Bahamians, and other foreign agricultural workers during the period 1942–64 are shown in table 2. The Mexican figures, which dwarf the others, rose steadily after the enactment of Public Law 78 in 1951 until a peak of 445,197 in 1956 and remained over 400,000 until 1959 when they began a steady decline.

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[99] U.S. House of Representatives Committee on Agriculture, "Farm Labor." Hearings, 82d Cong., 1st sess., 1951, p. 16.

TABLE 2.—FOREIGN WORKERS ADMITTED FOR TEMPORARY EMPLOYMENT IN U.S. AGRICULTURE, BY YEAR AND NATIONALITY [1]

Year	Total	Mexicans	British West Indians	Bahamians	Canadians	Others
1942 [2]	4,203	4,203	----------		(3)	----------
1943	65,624	52,098	8,828	4,698	(3)	----------
1944	84,419	62,170	16,574	3,048	1,414	[4] 1,213
1945	73,422	49,454	17,291	2,100	4,055	[4] 522
1946	51,347	32,043	11,081	2,690	5,533	----------
1947	30,775	19,632	1,017	2,705	7,421	----------
1948 [5]	44,916	35,345	2,421	1,250	5,900	----------
1949	112,765	107,000	1,715	1,050	3,000	----------
1950	76,525	67,500	4,425	1,800	2,800	----------
1951	203,640	192,000	6,540	2,500	2,600	----------
1952	210,210	197,100	4,410	3,500	5,200	----------
1953	215,321	201,380	4,802	2,939	6,200	----------
1954	320,737	309,033	2,159	2,545	7,000	----------
1955	411,966	398,850	3,651	2,965	6,700	----------
1956	459,850	445,197	4,369	3,194	6,700	[5] 390
1957	452,205	436,049	5,707	2,464	7,300	[6] 685
1958	447,513	432,857	5,204	2,237	6,900	[6] 315
1959	455,420	437,643	6,622	2,150	8,600	[6] 405
1960	334,729	315,846	8,150	1,670	8,200	[6] 863
1961	310,375	291,420	8,875	1,440	8,600	[6] 40
1962	217,010	194,978	11,729	1,199	8,700	[6] 404
1963	209,218	186,865	11,856	1,074	8,500	[6] 923
1964	200,022	177,736	[7] 14,361	(7)	7,900	25

[1] This does not include small number of Basques and other workers.
[2] Data for 1942–47 were obtained from USDA reports.
[3] Not available.
[4] Newfoundlanders transported.
[5] Data for 1948–61 were compiled by Bureau of Employment Security, U.S. Department of Labor.
[6] Includes 390 Japanese in 1956; 652 Japanese and 33 Filipinos in 1957; 315 Japanese in 1958; 400 Japanese and 5 Filipinos in 1959; Japanese only in 1960 and 1961; 279 Japanese and 125 Filipinos in 1962; Japanese only in 1963–64.
[7] Bahamians included with British West Indians.

Source: "The Migratory Farm Labor Problem in the United States," 87th Congress, 2d session, S. Rept. No. 1225, Washington, p. 10, 1962; and "Farm Labor Market Developments," Bureau of Employment Security, U.S. Department of Labor, January 1964 and January 1965. U.S. Department of Agriculture. Termination of the Bracero Program, Agricultural Economic Report No. 77, Washington, June 1965, p. 5.

Two of the major issues during the 1950's were illegal migration and, in the midfifties following the failure to renegotiate the international agreement, unilateral contracting. These are discussed below, followed by a general consideration of program experience and politics during the 1950's.

(1) Illegal immigration

Illegal Mexican immigration continued to be a major problem during the early 1950's as it had been during the 1940's. During the 10-year period 1934–43, apprehensions of deportable aliens by INS averaged under 12,000 a year. The number rose abruptly from 11,175 in fiscal year 1943 to 31,174 in 1944, more than doubled to 69,164 in 1945, and continued upward to 1,089,583 in fiscal year 1954 (see table 3). Despite their limitations, then as now, INS apprehension figures are the best available indication of the degree of illegal immigration. Without question, illegal immigration was very high during this period, rivaling the 1970's.

TABLE 3.—DEPORTABLE ALIENS LOCATED, ALIENS DEPORTED, AND ALIENS REQUIRED TO DEPART, YEARS ENDED JUNE 30, 1892–1976, TRANSITION QUARTER JULY–SEPTEMBER 1976, AND YEAR ENDED SEPT. 30, 1977

Period	Deportable aliens located [1]	Aliens expelled		
		Total	Aliens deported	Aliens required to depart [2]
1892–1977	11,900,654	11,990,530	740,185	11,250,345
1892–1900		3,127	3,127	
1901–10		11,558	11,558	
1911–20		27,912	27,912	
1921–30	128,484	164,390	92,157	72,233
1931–40	147,457	210,416	117,086	93,330
1931	22,276	29,861	18,142	11,719
1932	22,735	30,201	19,426	10,775
1933	20,949	30,212	19,865	10,347
1934	10,319	16,889	8,879	8,010
1935	11,016	16,297	8,319	7,978
1936	11,728	17,446	9,195	8,251
1937	13,054	17,617	8,829	8,788
1938	12,851	18,553	9,275	9,278
1939	12,037	17,792	8,202	9,590
1940	10,492	15,548	6,954	8,594
1941–50	1,377,210	1,581,774	110,849	1,470,925
1941	11,294	10,938	4,407	6,531
1942	11,784	10,613	3,709	6,904
1943	11,175	16,154	4,207	11,947
1944	31,174	39,449	7,179	32,270
1945	69,164	80,760	11,270	69,490
1946	99,591	116,320	14,375	101,945
1947	193,657	214,543	18,663	195,880
1948	192,779	217,555	20,371	197,184
1949	288,253	296,337	20,040	276,297
1950	468,339	579,105	6,628	572,477
1951–60	3,584,229	4,013,547	129,887	3,883,660
1951	509,040	686,713	13,544	673,169
1952	528,815	723,959	20,181	703,778
1953	885,587	905,236	19,845	885,391
1954	1,089,583	1,101,228	26,951	1,074,277
1955	254,096	247,797	15,028	232,769
1956	87,696	88,188	7,297	80,891
1957	59,918	68,461	5,082	63,379
1958	53,474	67,742	7,142	60,600
1959	45,336	64,598	7,988	56,610
1960	70,684	59,625	6,829	52,796
1961–1970	1,608,356	1,430,902	96,374	1,334,528
1961	88,823	59,821	7,438	52,383
1962	92,758	61,801	7,637	54,164
1963	88,712	76,846	7,454	69,392
1964	86,597	81,788	8,746	73,042
1965	110,371	105,406	10,143	95,263
1966	138,520	132,851	9,168	123,683
1967	161,608	151,603	9,260	142,343
1968	212,057	189,082	9,130	179,952
1969	283,557	251,463	10,505	240,958
1970	345,353	320,241	16,893	303,348
1971	420,126	387,713	17,639	370,074
1972	505,949	467,193	16,266	450,927
1973	655,968	584,847	16,842	568,005
1974	788,145	737,564	18,824	718,740
1975	766,600	679,252	23,438	655,814
1976	875,915	793,092	27,998	765,094
1976 TQ	221,824	199,207	8,927	190,280
1977	1,042,215	897,243	30,228	867,015

[1] Aliens apprehended first recorded in 1925. Prior to 1960, represents total aliens actually apprehended. Since 1960, figures are for total deportable aliens located, including nonwillful crewman violators.
[2] Aliens required to depart first recorded in 1927.

Source: U.S. Department of Justice, 1977 Annual Report: Immigration and Naturalization Service. Washington, U.S. Government Printing Office, 1979, p. 92.

The 1951 international agreement, negotiated after the enactment of Public Law 78, was purposefully set for a duration of only 6 months in order to create pressure on Congress to deal with what President Harry Truman characterized as "the more basic problem of controlling illegal immigration." [99a] This was done in direct response to a request from President Truman to President Miguel Alemán of Mexico.

In a special message to the Congress on July 13, 1951, on the occasion of the enactment of Public Law 78, allowing for employment of agricultural workers from Mexico, President Truman called for the enactment of legislation providing a penalty for harboring or concealing aliens who have entered the country illegally;[1] legislation establishing the authority of INS personnel to inspect places of employment without a warrant where they have reason to believe illegal immigrants are working or quartered; a supplemental appropriation for the INS to expand its enforcement personnel in the Southwest; and an increase in funds for the Labor Department's Farm Placement Service.[2] The following day, President Truman wrote President Alemán of Mexico that—

> I have pointed out to the Congress that this law, taken by itself, cannot cure the social and economic difficulties which we face in dealing with the farm labor situation in the southwestern United States. I am anxious to see progress made toward improving working conditions and living standards for our own citizens and for the contract workers from Mexico who are employed on our farms. That will be of great benefit to the individuals concerned and to the stability of our agricultural production. But if these things are to occur the government of the United States and Mexico must take steps to shut off the stream of Mexican citizens immigrating illegally into the United States.
>
> The low wages paid to these people and the poor conditions under which they are forced to live have had the effect of lowering living and working standards for our own citizens and for Mexican citizens legally employed in this country. Other undesirable social consequences have followed the flow of illegal immigrants, consequences which bear most heavily on our citizens and resident aliens of Mexican nationality.
>
> The experts in this government and those in private life who have studied this problem are convinced that to improve economic and social conditions in the farm lands of the southwest, we must first curtail illegal immigration from Mexico. This will require the Congress of the United States to pass new legislation and to appropriate additional funds.
>
> I have asked in my Message that the Congress take this needed action at once. I have indicated that my approval of the new law on Mexican contract labor was given only because of assurances that the Congress would consider the other needed measures. I am concerned, however, that

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[99a] Truman letter, July 14, 1951; reprinted in Kiser and Kiser, eds., Mexican Workers in the United States, Albuquerque, University of New Mexico press, 1979, p. 156.

[1] The U.S. Supreme Court had ruled that the provision in the Immigration Act of 1917 prohibiting the harboring of illegal aliens did not include a penalty, *U.S.* v. *Evans*, 333 U.S. 483 (1948).

[2] U.S. Public Papers of the President of the United States, Harry S. Truman, 1951. Washington, U.S. Government Printing Office, 1965, pp. 391-392.

once the two governments reach a new agreement for the continued importation of contract workers from Mexico, the Congress might not act upon the more basic problem of controlling illegal immigration.

Therefore, I would like to suggest, for your consideration, that the new agreement between Mexico and the United States, for contract workers, might well be confined to a six month period. That would allow time for further action by the United States Congress, and if this action were not forthcoming, a further renewal of the agreement could be postponed.

I make this suggestion because I feel so strongly that the people of both Mexico and the United States have much to gain if this illegal immigration can be brought to an end. The Mexican citizens who come here legally to do farm work on contract would surely benefit just as would our own citizens who are working as farm laborers.[3]

President Alemán agreed to the proposal, in part as follows:

I have read the message which you delivered to the Congress of the United States on signing the above-mentioned law, and I am pleased to say to you that I find in it a clear reflection of the concern which my Government has felt for some time and of the plan which we have had in mind for providing an adequate solution to this problem. In effect, I believe that if we do not succeed, by combining our efforts, in putting a definite stop to the illegal movement of agricultural workers, this will not only redound to the detriment of the economies of our respective countries, but the possibilities for our cooperation will be affected in a very serious way. For that reason, I was pleased at the tone of your message and at the firm intent of your Government to collaborate with that of Mexico in this important matter. Once this problem referred to above has been completely resolved, it will be much easier to find adequate solutions with respect to the salaries, working conditions, and living conditions for those Mexicans who may be contracted under the agreement between our two Governments. Meanwhile, I have given instructions to the Mexican representatives in the discussions now being held with the United States that the new agreement be limited to a period of six months. This is sufficient time for the Congress of the United States to adopt additional legislation and we could observe the effect which the new agreement may have on the illegal traffic in Mexican workers and its effect on employers who, lacking a clear sense of their social responsibility, place personal interests before the well-being of the whole.[4]

Attempts to pass legislation prohibiting the employment of and establishing penalties for the harboring of illegal aliens in 1951 and 1952 were only partially successful. The result was the Act of March 20, 1952,[5] subsequently recodified as sections 274 and 287(a)(3)

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[3] Truman letter, July 14, 1951, p. 156.
[4] Translated letter from M. Alemán to Harry S. Truman, July 27, 1951, in Kiser and Kiser, eds. (1979), pp. 157–158.
[5] Public Law 283, 82d Cong., 2d sess., 66 Stat. 26.

of the Immigration and Nationality Act of 1952. Under the law then and now, the willful importation, transportation, or harboring of illegal aliens is a felony, punishable by a $2,000 fine or imprisonment of up to 5 years, or both. However, employment is specifically exempted from the penalties for harboring, in what was popularly referred to as the Southwest or Texas proviso. During the Senate floor debate on February 5, 1952, Senator Paul Douglas offered an amendment to provide penalties for the employment of illegal aliens if the employer had "reasonable grounds to believe a worker was not legally in the United States." It was resoundingly defeated by a vote of 69–12 following a heated debate, with the arguments similar to those used during the 1970's for and against employer sanctions.

Illegal immigration was brought to a halt in the mid-1950's by a greatly increased law enforcement effort on the part of the U.S. Government, combined with a subsequent expansion of the bracero program as a substitute legal means of entry. During the period 1941–52, the INS border patrol had been cut by 350 officers, while apprehensions increased by 4,000 percent.[6] This changed in 1954 when the decision was made within the executive branch to increase the border patrol and attempt to get control of the situation. The result was Operation Wetback, an area sweep operation which simultaneously helped end the illegal alien problem of the mid-1950's, and left scars in the Mexican-American community which remain today.

The decisions leading to Operation Wetback followed a visit by Attorney General Herbert Brownell to the California border in August 1953. During the course of the trip, he described the situation as "shocking," and characterized the previous decisions to cut border patrol manpower for economy reasons, which he had himself supported 4 months previously, as "the most pennywise and pound-foolish policy I've ever seen." [7] The increase in the border patrol from 1,079 to 1,479 over the period fiscal year 1954–55 reflects the results of Attorney General Brownell's conversion.

General Joseph Swing, a former classmate of President Eisenhower's at West Point, was appointed Commissioner of INS in the spring of 1954. According to Richard Craig, General Swing "discouraged the Attorney General from sending U.S. troops to the border in an effort to halt the influx," [8] although reports on this differ as they do in general regarding the tactics of Operation Wetback.

The operation was described as follows in the 1955 INS annual report:

> "*Wetbacks.*"—A large scale task force operation in the Southwest, working in proximity of the border, accounted for a great majority of apprehensions. This "Special Mobile Force Operation" began in California in the last few days of fiscal 1954, and after the backbone of the wetback invasion was broken in California, shifted to south Texas. Mobile task forces were assembled and set into action. Light planes were used in locating illegal aliens and directing ground teams in jeeps to effect apprehensions. Transport planes were used to airlift aliens to staking areas for prompt return to Mexico.

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[6] Hadley, Eleanor, A Critical Analysis of the Wetback Problem. Law and Contemporary Problems, Duke University School of Law, v. 21, spring 1956, p. 348. (Cited as Hadley (1956).)
[7] Ibid., p. 350.
[8] Craig (1971), p. 128.

Uncounted thousands of aliens departed California of their own accord during the operation. When the operation shifted to Texas, 60,456 aliens returned to Mexico through ports of entry during the first 30 days to avoid arrest. Others simply fled across the Rio Grande River.

These activities were followed by mopping up operations in the interior and special mobile force units are continuing to discover illegal aliens who have eluded initial sweeps through such cities as Spokane, Chicago, Kansas City, and St. Louis, which removed 20,174 illegal Mexican aliens from industrial jobs.

The volume of apprehensions of Mexican nationals continued to decrease following the apprehension and expulsion of large numbers of wetbacks and the mass exodus of thousands of others who departed of their own accord. Nevertheless, vigorous efforts were continued to apprehend those who managed to escape detection and those who succeeded in their attempts to enter illegally or abandoned status after legal entry. By the end of June 1955, the rate of apprehensions had dropped to 11 percent of that of June 1954, and 59 percent of those apprehended were taken into custody within 48 hours after crossing the border.[9]

The 1955 INS Annual Report concluded that, "The so-called 'wetback' problem no longer exists. * * * The border has been secured." [10] It also emphasized the future desirability of the prevention of illegal entries, as opposed to the expulsion process of which Operation Wetback was an example:

> To maintain that state of security the Service cannot afford to revert to its operational procedures in effect before the past year. The prevention of illegal entries, as the major ingredient of border control, is more difficult, requires more ingenuity, more men and equipment, but is, in the long run, more economical and more humane than the expulsion process.[11]

Without question, the bracero program was also instrumental in ending the illegal alien problem of the mid-1940's and 1950's. It should be noted that throughout its duration, and particularly during the 1950's, one of the major arguments used in support of the bracero program was that it offered an alternative and, therefore, at least a partial solution to the illegal alien problem. This position was taken by both the Mexican Government and the U.S. State Department, among others. It was stated in a 1954 House report, as follows:

> Reason clearly indicates that if a Mexican who wants to come to the United States for this employment can enter this country legally, with all the protection and benefits that a well-considered and well-administered employment program give him he will do so, rather than come in illegally and be deprived of the benefits of such a program and any rights or standing in American courts. If, because the program is not

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[9] U.S. Department of Justice, Annual Report of the Immigration and Naturalization Service, 1955, pp. 14–15.
[10] Ibid., p. 15.
[11] Ibid.

> available or is not realistically geared to the requirements of employers or workers, the Mexican seeking employment finds it's impossible or difficult to come in legally, many of them will find their own way across the long border between the United States and Mexico and get employment where they can, under whatever wages and working conditions they are able to obtain.[12]

In their accounts of Operation Wetback, Julian Samora and Richard Craig stressed the importance of "public sentiment, including that of the growers" [13] as a factor in the success of the INS operation. According to Craig:

> Based upon coordinated action of many elements at various levels, Operation Wetback was an overwhelming success. The greater part of what it accomplished was due to cooperation from grower interests. Such complicity did not come by accident. From the operation's inception, General Swing took pains to cultivate grower cooperation. Farmers were promised assistance in securing domestic and legally contracted braceros to replace wetbacks. In return, most of them cooperated.[14]

Similarly, in his comments on the success of Operation Wetback in dealing with the illegal alien problem, Ernesto Galarza indicated that a key factor was:

> * * * the change in attitude of farm employers, hundreds of whom had come to accept the legal braceros as a practical and safe alternative [to Wetbacks] and had joined associations to procure them. By the time the operation was launched the bracero system had shown its economic and political feasibility.[15]

In his otherwise highly critical examination of the bracero program, Galarza credits it with "the dramatic reduction, if not the total elimination, of the Wetback traffic," although by dubious means: "The [illegal] traffic became suppressed only when it became possible to assure farm employers, substantially on their terms, that they could have as many contract laborers as they might demand." [16]

The causal relationship between the bracero program and the swelling illegal alien traffic which began in 1944, 2 years after the inception of the legal program, must also be kept in mind. An examination of the early history of the bracero program appears to indicate that the program stimulated illegal migration to the United States, in part because more Mexicans wished to come than were legally permitted, and partly because it was often easier for both the U.S. employer and the foreign worker if the latter entered illegally. While illegal entries, as indicated by INS apprehensions, declined dramatically during the last 10 years of the bracero program, Julian Samora notes that during the program's 22-year life, over 5 million illegal aliens were apprehended, a figure exceeding the 4.8 million contracted.[17]

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[12] H. Rept. 1199, 83d Cong., 2d sess., 1954, p. 3.
[13] Samora, Julian. Los Mojados: The Wetback Story. Notre Dame, University of Notre Dame press, 1971, p. 52.
[14] Craig (1971), p. 129.
[15] Galarza, Ernesto. Merchants of Labor. Charlotte, McNally and Loftin Pub., 1964, p. 70.
[16] Ibid., p. 255.
[17] Samora (1971), p. 19.

In short, the bracero program appears to have been simultaneously a major cause of as well as a significant cure for the illegal immigration problem of this period—and Galarza and others argue that the cure was effected at a heavy price as far as the welfare of domestic farm labor was concerned. Concern about its adverse impact on domestic workers superseded illegal migration as the principal problem associated with the bracero program, and together with the increasing mechanization of cotton picking, led to the eventual demise of the program and, some would argue, the consequent return of illegal migration.

(2) Foreign policy considerations: The 1954 unilateral contracting issue

Public Law 78 was extended three times during the 1950's: for 2 years in 1953 without amendment; for 3½ years in 1955 with minor amendments; and for 2 years in 1958 without amendment. International agreements with Mexico were renegotiated in 1952, 1954, 1956, 1957, and 1958. The renegotiation process in 1953–54 was particularly difficult, and is discussed below. This was also the period of Operation Wetback; more than 1 million apprehensions were made by INS in 1954 and most of the apprehended aliens were sent back to Mexico.

The failure of the United States and Mexico in early 1954 to successfully renegotiate the international agreement regarding the importation of Mexican workers resulted in the enactment of an amendment to Public Law 78 providing authority for the United States to recruit Mexican workers "pursuant to arrangements between the United States and the Republic of Mexico *or after every practicable effort has been made by the United States to negotiate and reach agreement on such arrangements*" (amendment indicated by italics).[18]

This authority for the unilateral recruitment of Mexican workers was never used since a new agreement was reached on March 18, 1954, 8 days before the amendment was signed into law. A principal purpose of the amendment had, in fact, been to pressure Mexico into reaching an acceptable agreement.

The problem arose in the renegotiation of a new agreement to replace the one which expired at the end of December 1953. Among other difficulties, Mexico argued that the prevailing wage determination by the Labor Department was too low.

In mid-January 1954 when it became clear that an agreement was not going to be reached, the Departments of Labor, Justice, and State issued a joint communique announcing an interim program of unilateral recruitment. As expected, Mexico denounced the program and stated that braceros could no longer be legally contracted. According to Richard Craig, "In expectation of the Mexican announcement, unofficial State Department sources quickly let it be known that unilateralism would be pursued despite Mexican protestations." [19] At about the same time, Secretary of State John Foster Dulles announced in a press conference that, in Craig's words, "the United States regretted the discontinuance of talks and was prepared to reopen negotiations." [20] His offer was officially turned down but there was a somewhat warmer unofficial response.

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[18] Act of Mar. 18, 1954; 68 Stat. 28.
[19] Craig (1971), p. 110.
[20] Ibid., p. 111.

Unilateral recruitment began on January 22, and continued, accompanied by "bloody clashes and riots between Mexican guards and aspiring braceros" and "instant legalization," [21] until early February. On February 2, the Department of Labor was informed by the Comptroller General that Federal funds could not legally be used for unilateral recruitment under Public Law 78.

Legislative action began immediately on the amendment referred to above, to provide the necessary legal authority for unilateral recruitment. The continuation of the bracero program was seen as "both necessary from the standpoint of United States agriculture, and desirable from the standpoint of helping to solve the deplorable wetback situation." [22] The State Department fully backed the legislation, apparently as a means of pressuring Mexico into negotiating an acceptable agreement. Quoting from Assistant Secretary of State Thurston Morton's letter included in the House report:

> In spite of the most vigorous effort it was impossible to reach agreement on improvements which the United States felt essential if effective joint control over the migrant movement were to be achieved.
>
> Under these circumstances the United States has taken the position that, with effective control a necessity, it would have a better chance of achieving this through its own action than through continuation of the old agreement. It is also felt that the likelihood of achieving a satisfactory agreement with Mexico will be improved if it can be shown that the United States is capable of exercising reasonably satisfactory controls by itself.
>
> The United States has made it abundantly clear that it prefers to handle this problem jointly with Mexico. This continues to be our firm position and our sincere belief.[23]

Before the amendment allowing unilateral recruiting was signed into law, Mexico requested a resumption of friendly talks which resulted in an agreement acceptable to both sides. Quoting again from Richard Craig:

> Whether the policy of unilateral recruitment was sound or ill-advised was thus highly debatable and dependent upon what one sought to accomplish by it. Its opponents were correct in viewing such a scheme as risky diplomatic armtwisting. However, its supporters proved equally astute in their assessment. Hearings on H.J.R. 355 were not yet completed when Mexico began to "come around." [24]

Craig also observed that "No postwar United States policy has so incensed and humiliated the Mexican public as did the foray into the unilateral bracero contracting in 1954." [25]

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[21] Ibid., pp. 112–113.
[22] H. Rept. 1199, 1954, p. 4.
[23] Ibid., p. 5.
[24] Craig (1971), p. 117.
[25] Ibid., p. 118.

(3) Summary: Program experience during the 1950's

The number of workers entering under the bracero program increased rapidly during the 1950's, reaching a peak of more than 445,000 in 1956 (see table 2). Cotton harvesting in Texas, New Mexico, Arkansas, and Arizona accounted for much of this increase, along with a general increase in the number of braceros working throughout the country in vegetable and field crops. In 1959, workers were employed in 38 States. In fact, however, the use of bracero workers was highly concentrated; 94 percent of the workers were employed in Texas, California, Arkansas, Arizona, and New Mexico, where they were used primarily in cotton, sugar beets, fruits, and vegetables. Almost 50,000 farms, or 2 percent of the total, used braceros during 1959, the most active period of the program.[25a]

The administration of the farm labor program during the 1950's by the Labor Department and the participating State agencies has been heavily criticized. Quoting from Ellis Hawley:

> The United States Employment Service was only a coordinating agency for the State services and their farm placement divisions. The crucial day-to-day decisions were made on the local and State levels, where employer influence was strong, and since the whole farm placement system had once been a part of the Department of Agriculture, the men who ran it continued to think in terms of supplying farm labor, not in terms of protecting or finding jobs for farm workers. Repeatedly, such men showed a disposition to accept the employers' own determination of "labor shortages," agree to whatever "prevailing wage" the employer associations were willing to pay, and then to recruit a foreign labor force. During the mid-1950's in particular, the program was run to suit the employers. In the words of Secretary of Labor James Mitchell, it became a sort of "lefthanded adjunct" to the Labor Department, a program that was presumably temporary in nature, of minor importance, and therefore of little concern to the higher officials there.[26]

By the late 1950's Secretary of Labor James Mitchell became concerned about the laxity of the program's administration and moved to tighten its control.

During the greater part of the 1950's, the bracero program remained basically immune to opposition from Mexican-Americans, labor groups, and others who were concerned about employer control over wage determinations, and in general, sought to extend to domestic workers the same benefits guaranteed to the foreign workers. The power of the farm bloc was sufficient during this period to prevent major changes in the program.[27]

The bracero program also retained the general endorsement of the Eisenhower administration throughout the 1950's. However, by the end of the decade, the administration had moved to, at best, a position of neutrality regarding the bracero program, with Secretary of Labor Mitchell actively opposed to it in its existing form.

[25a] Labor Department report (1963), p. 42.

[26] Hawley, Ellis W. The Politics of the Mexican Labor Issue, 1950–1965 (1966). Kiser and Kiser, eds. Mexican Workers in the United States. Albuquerque, University of New Mexico press, 1979, pp. 103–104.

[27] Ibid., pp. 100–103.

(b) 1959–1964: Program phasedown

The ending of the bracero program during the 1960's was the result of growing opposition to the program from labor and social welfare groups, the reduced demand for agricultural labor because of increasing mechanization of cotton, and a tighter administration of the program by the Labor Department. In other words, the bracero workers became less necessary and attractive at the same time that the political climate was shifting away from support for the program because of concern about the welfare of domestic migrant workers. The implications of the bracero program for U.S.-Mexican relations were of increasing importance during the 1960's and apparently impeded the program's demise. According to Richard Craig, "Had it not been for its diplomatic ramifications, the bracero program would not have been extended beyond 1963 and perhaps not beyond 1961." [28]

The fortunes of the bracero program began to decline in 1959, although the number of braceros admitted that year was 437,643, the second largest in the program's history. Quoting from a Department of Labor study, "By 1959 public concern over the program's operation was akin to that of the late 1940's and early 1950's when the nongovernmental program was in operation." [29] The numbers began a sharp decline until the program's termination at the end of 1964 (see table 2).

By 1962, the number of braceros contracted had dropped to less than 200,000. The number of farms using braceros fell from a peak of 50,000 in 1959 to 35,000, with much of the decrease occurring in Texas. According to the Labor Department study, "the impact of the 1961 amendments to Public Law 78, increased mechanization of the cotton harvest, and higher wage rates were the primary factors for this decrease." [30] A Department of Agriculture study reported that 34 percent of the cotton crop was machine harvested in 1958 compared to 72 percent of the crop in 1963. The number of foreign workers used in harvesting the crop was less than 10 percent of what it had been 5 years earlier. The Department of Agriculture concluded that, "a continuation of the trend is likely for the next few years and indicates the termination of the bracero program will not adversely affect total production." [31] In fact, workers would be available for use in other crops.

The Department of Agriculture study indicated that in 1963 the number of braceros contracted constituted about 5.9 percent of the total persons who did supplemetal farmwork, and 0.7 percent of the farmwork force. However, while this was a small portion of the national farm labor force, in fact about 95 percent of them were concentrated in seven States: Arizona, Arkansas, California, Colorado, New Mexico, Michigan, and Texas.[32]

Mexican employment was also highly concentrated by crop. In terms of total numbers employed, the principal crops in 1962 were tomatoes, cotton, cucumbers, and sugar beets. Mexicans constituted

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[28] Craig (1971), p. 196.
[29] Labor Department report (1963), p. 40.
[30] Ibid., p. 42.
[31] U.S. Department of Agriculture. Termination of the Bracero Program, Agricultural Economic report No. 77. Washington, June 1965, p. 21.
[32] Ibid., p. v.

a sizable percentage of the peak work force in lettuce (69 percent), cucumbers (52 percent), melons (42 percent), and tomatoes (41 percent).[33]

(*1*) *Mexican farm labor program: Consultants' report, October 1959*

In October 1959, a four-member group of consultants appointed by Secretary of Labor James Mitchell issued a report which was highly critical of the Mexican farm labor program and recommended substantial changes. The members of the group were Glenn E. Garrett of the Texas Good Neighbor Commission, Msgr. George G. Higgins of the National Catholic Welfare Conference, former Senator Edward J. Thye (R.-Minn. 1947–59), and Chancellor Rufus B. von Kleinsmid of the University of Southern California.

The consultants' report stated that Congress had two purposes in enacting Public Law 78, the first being to "obtain agricultural workers from Mexico to meet peak labor shortages." They concluded that, based on 8 years' experience in administering the law, the Department of Labor had been successful in meeting this goal and, incidentally and significantly, in controlling illegal entry:

> Almost one-half million Mexicans were brought into the country last year in an orderly and organized fashion to supplement the domestic farm work force. The existence of such a legal importation system has facilitated the elimination of the illegal entry of Mexicans ("wetbacks"). Although improvement in compliance activity is indicated, the mechanics for recruiting Mexicans, operating reception centers, transporting "braceros" and policing their conditions of employment have been improving each year.[34]

The second major objective of the law identified by the consultants was to "insure that our own domestic farm workers will not be adversely affected by the employment of Mexicans." Here the Department of Labor was found to be "much less successful."[35] Despite the prohibition in the law against the admission of workers unless it was determined that they would not have an adverse effect on the wages and working conditions of domestic workers, it was found that they had in fact had such an effect in a variety of ways. There were indications that the preference of some employers for Mexican labor had forced domestic workers to seek other job opportunities; that the use of foreign workers had deprived domestic farmworkers of employment by causing the already short work season to be further compressed; and, perhaps most significantly, that the availability of foreign workers had prevented normal competition for workers in the open market and a consequent rise in wage levels.[36] The consultants' report made the following recommendation regarding adverse effect criteria:

> The test of adverse effect on wages and employment, which, if threatened, precludes authorization of Mexican

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[33] Labor Department report (1963), p. 48.

[34] U.S. Department of Labor. Mexican Farm Labor Program, Consultants Report, October 1959. Reprinted in U.S. Congress. Senate. Committee on Agriculture and Forestry. Hearings, 87th Cong., 1st sess., Washington, U.S. Government Printing Office, 1961, p. 268. (Cited as Mexican Farm Labor Program, Consultants Report (1959; Senate hearings, 1961).)

[35] Ibid.

[36] Ibid., pp. 272–273.

workers, should be more specific. The Secretary should be directed to establish specific criteria for judging adverse effect including but not limited to:

(a) Failure of wages and earnings in activities and areas using Mexicans to advance with wage increases generally;

(b) The relationship between Mexican employment trends and wage trends in areas using Mexican workers;

(c) Differences in wage and earning levels of workers on farms using Mexican labor compared with non-users.[37]

The method for computing the prevailing wage which braceros were required by law to be paid was described as follows:

> The prevailing wage to be paid Mexican workers is determined by conducting surveys at frequent intervals among samples of employers of domestic workers in areas where foreign workers are used. As an added check individual workers are consulted as to wages received for each activity. Under a formula adopted in 1958, the wage rate paid to 40 percent of the workers is considered the "prevailing wage" for a given activity in the area surveyed. In the small proportion of cases (less than 5 percent) where no single wage is paid to 40 percent of the workers, an alternative formula is used to find the prevailing wage. Observations are arrayed from the highest to lowest wage paid. The prevailing wage range is found by starting with the lowest wage and proceeding upward until 51 percent of the workers in the survey are included. The highest wage paid to any worker in the 51 percent group becomes the bottom of the range. The top of the range is the highest rate paid to any worker in the survey.[38]

Eight years earlier, the Truman Commission on Migratory Labor had been unable to find out with any certainty how the prevailing wage was determined, and what they did find was not encouraging:

> All foreign labor agreements * * * provide for the payment of a stipulated minimum wage or the "prevailing wage," whichever is higher. * * * Ordinarily, the so-called prevailing rate is the effective rate. The "prevailing rate" is not officially set or determined by any government agency.
>
> We endeavored, without much success, to find out what the prevailing wage is and how it is determined. Neither Government agency people nor employers could give much enlightenment.
>
> As best we could determine, the "prevailing wage" in seasonal employment in agriculture is arrived at somewhat in this manner: Farm employers meet in advance of the season and decide on the wage they intend to pay. It is set at an amount they hope they won't have to exceed during the season. Whether the wage agreed upon is sufficient to attract the labor supply needed is apparently not usually considered an important factor in making the decision.[39]

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[37] Ibid., p. 283.
[38] Ibid., p. 273.
[39] Report of the President's Commission on Migratory Labor (1951), p. 59.

While progress had clearly been made since 1951, the apparent inadequacies of the prevailing wage requirement as a protection for domestic workers in situations involving the large-scale importation of foreign workers was underscored in the 1959 consultants' report as follows:

> The prevailing wage concept may work satisfactorily in situations where wage rates are determined by competitive forces in the labor market, and there are so few Mexicans that their presence does not upset this equilibrium. Actually, however, the availability of a potential reserve of foreign labor generally influences the wage levels in the area for crops on which Mexicans are usually employed, and on other crops as well. Thus, Mexican rates are tied to domestic wage levels, which, in turn, may be more or less stabilized by the presence of Mexicans. Therefore, wage levels tend to become fixed in areas and activities where Mexicans are employed.[40]

The consultants concluded that prevailing wage determinations were generally recognized as meaningless in "dominated areas," or "areas and activities within areas in which the farm work force is preponderantly Mexican national." They identified some of the heavily dominated crops as "lettuce, citrus, melons, and carrots in parts of Arizona; tomatoes, lettuce, citrus, starwberries, sugar beets, and melons in California; citrus fruit, beans, peppers, cucumbers, in parts of Texas; cotton in New Mexico; pickles and lettuce in Colorado; and sugar beets in a number of States." [41] They made the following recommendation regarding wages:

> The Secretary should be authorized to establish wages for Mexicans at no less than the prevailing domestic farm rate in the area or in the closest similar area for like work; and no less than a rate necessary to avoid adverse effect on domestic wage rates.[42]

The consultants also concluded that "one of the reasons that shortages of labor cannot be filled by American workers is that conditions of employment are less satisfactory than those offered foreign workers," [43] specifically in the areas of transportation, housing, insurance, and guarantees relating to work, wages, and employer performance. At that time, for instance, foreign workers were guaranteed a minimum wage based on the prevailing wage in the area of employment as determined by the local employment office. Domestic agricultural workers, in contrast, were not protected by a contract minimum or by the wage and hour provisions of the Fair Labor Standards Act; State minimum wage laws were applicable to all agricultural workers only in Alaska, Hawaii, and Puerto Rico.[44] It was also found that an insufficient effort was made to recruit domestic workers by some employers of foreign labor. The following recommendations were addressed to the general issue of recruitment and availability of U.S. labor:

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[40] Mexican Farm Labor Program, Consultants' Report (1959; Senate Hearings, 1961), p. 273.
[41] Ibid., p. 274.
[42] Ibid., p. 283.
[43] Ibid., p. 276.
[44] Ibid., p. 277.

Sections 503(1) and 503(3) of P.L. 78, both of which relate to the availability of domestic labor, should be combined. The test of availability of domestic labor, which must be made before the use of foreign workers may be authorized, should be clarified and strengthened. The Law should clearly stipulate that the primary responsibility for the recruitment of domestic workers rests with the employer himself. The Law should direct the Secretary of Labor not to certify as to the unavailability of domestic labor unless: (a) employers have undertaken positive and direct recruitment efforts in addition to the efforts of the public employment offices. Such efforts should be made sufficiently in advance of the need. They might include, but not be restricted to, publicizing needs, participation in day-hauls, providing adequate housing and transportation; (b) employment conditions offered are equivalent to those provided by other employers in the area who successfully recruit and retain domestic workers; (c) domestic workers are provided benefits which are equivalent to those given Mexican nationals, i.e., transportation, housing, insurance, subsistence, employment guarantees, etc.; (d) employers of Mexican nationals offer and pay domestic workers in their employment, no less than the wage rate paid to Mexican labor.[45]

The consultants also recommended that "the legislation should clearly confine the use of Mexicans to necessary crops in temporary labor shortage situations and to unskilled, non-machine jobs." [46] In fact, the use of braceros was not statutorily limited at that time to seasonal occupations or in terms of skills. However, according to the consultants' report, "the history and background of this program indicate that it generally was considered to be for the purpose of meeting emergency needs." [47] They found that 20,000 braceros were employed on a permanent basis; that thousands were engaged in skilled and semi-skilled jobs; and that "more than 60 percent of all Mexicans employed at peak work in crops which are in surplus supply." [48]

The consultants also addressed the issue of international relations. They found that, "all things considered," Mexico probably "would regret and possibly resent the termination of the program in 1961," which "could have an adverse effect on relations between Mexico and the United States." [49] Also under the heading of international relations, they considered "the possibility of a large scale recurrence of 'wetbacks' if Public Law 78 is not renewed." Further:

> Such a development would be unfortunate for our own domestic workers, for the wetbacks themselves, and for the two governments involved. Still another possibility, if Public Law 78 were to be terminated, would be the recruitment of Mexicans under Public Law 414, the "Immigration and Nationality Act" but under procedures and conditions less desirable than Public Law 78.[50]

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[45] Ibid., pp. 282–283.
[46] Ibid., p. 282.
[47] Ibid., p. 272.
[48] Ibid., pp. 272–273.
[49] Ibid., p. 280.
[50] Ibid., p. 280.

The first possibility became a reality, but the second one most definitely did not. These international considerations did not, in the opinion of the consultants, "constitute a conclusive argument in favor of extending Public Law 78. The Congress of the United States should assess the Mexican farm labor program on its own merits and in terms of its impact on the agricultural economy and the labor force of the U.S." [51]

The consultants somewhat reluctantly recommended an extension of Public Law 78 on a temporary basis, "conditioned on its being substantially amended so as to prevent adverse effect, ensure utilization of the domestic work force, and limit the use of Mexicans to unskilled seasonal jobs." [52] A number of their specific recommendations intended to accomplish these goals have been noted above. They also recommended that certain steps be taken to improve the Labor Department's administration of the program.

(2) Program extensions, 1960–63

Public Law 78, the legislative basis for the Mexican bracero program, was extended for 6 months without amendment in 1960; for 2 years with amendments in 1961; and for 1 year without amendment in 1963 until December 31, 1964. At that point, it was allowed to lapse without a further effort to extend it. International agreements were renegotiated by Mexico and the United States with comparative ease throughout this period. A State Department representative testified at 1960 House Agriculture Committee hearings that, after some "sharp differences," the two countries had gradually succeeded in reaching a "harmonious relationship" in dealing with the bracero program.[53]

The opposite situation prevailed in Congress. Commenting generally on the ongoing liberal-conservative battle over the bracero program, James Creagan wrote:

> Positions concerning continuance and modification of Public Law 78 became involved in the liberal-conservative struggle in Congress. Liberals wished a swift end to the program or at least sweeping changes which would extend a wide range of benefits to domestic workers through use of this program. Conservatives, ever wary of increased administrative controls over farming or the country in general, desired simple extension without restrictions and modifications.[54]

By 1960, supporters of the bracero program were increasingly angered by Secretary of Labor Mitchell's efforts to tighten its administration. On the other hand, opponents of the program, including Mexican-Americans, welfare groups and the powerful AFL–CIO, were gaining in strength and congressional representation.

An unsuccessful effort was made in 1960 by the program's congressional supporters to divide jurisdiction for the program between the Departments of Labor and Agriculture in an attempt to counteract what was seen as the Secretary of Labor's increasingly restrictive administration. A related amendment to legislation extending the

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[51] Ibid.
[52] Ibid., p. 282.
[53] U.S. Congress. House. Committee on Agriculture. Extension of the Mexican Farm Labor Program, Hearings, 86th Cong., 2d sess., 1960, pp. 400–401.
[54] Creagan, James F. Public Law 78: A Tangle of Domestic and International Relations. Journal of Inter-American Studies, v. 7, October 1965, pp. 550–551.

program would have prohibited the Secretary of Labor from issuing regulations, such as those issued November 20, 1959,[55] setting prevailing wages and minimum working conditions for domestic workers recruited through the Department of Labor's Farm Placement Service. The final bill included no amendments, but it extended the program for only 6 months, as opposed to the 2 years sought by the program's supporters.

In 1961 the Kennedy administration backed fairly extensive amendments to Public Law 78 intended to strengthen the protection of domestic workers. In terms similar to those used by the 1959 consultants' committee, the Kennedy administration argued that the braceros were adversely affecting the wages and working conditions of domestic workers, particularly in certain areas and occupations. This position was presented by Secretary of Labor Arthur J. Goldberg, who noted that in "bracero-dominated areas," of which they had identified 80, the prevailing wage standards offered no protection to domestic workers since the prevailing wage was in fact set by the braceros themselves. Quoting Secretary Goldberg:

> And what happens there is that the wage level, which we have been able to fix since the standard was adopted, has remained stationary for 10 years at a time when throughout the country the domestic farm-labor rate has been increasing. And there is no domestic labor really available at the wages which prevail there.
>
> I think the increase in the wages of domestic farm labor since 1946, if I remember correctly, has been 46 percent throughout the country—46 percent wage increases.
>
> Yet in these areas, the wage has remained stationary.[56]

Secretary Goldberg indicated that the Kennedy administration was not advocating termination of the bracero program. However, they were seeking several substantive and controversial amendments. One of them—the statutory limitation of braceros to temporary or seasonal agricultural work, excluding the operating of machines and certain processing function—was adopted. However, an amendment requiring that the wages offered braceros be based on 90 percent of the statewide or national average, in order to afford protection to "bracero-dominated areas," passed the Senate by a vote of 40–42 and was dropped in conference. As noted below, a related measure was adopted administratively the following year. The 1961 legislation extended Public Law 78 through December 31, 1963, and contained the last substantive amendments made to this legislation.

President John F. Kennedy indicated in October 1961 that he was signing the legislation extending the bracero program through December 31, 1963, reluctantly:

> The adverse effect of the Mexican farm labor program as it has operated in recent years on the wage and employment conditions of domestic workers is clear and cumulative in its impact. We cannot afford to disregard it. We do not condone it. Therefore, I sign this bill with the assurance that the Secretary of Labor will, by every means at his disposal, use the

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[55] 24 F.R. 9367-9368.

[56] U.S. Senate. Committee on Agriculture and Forestry. Extension of Mexican Farm Labor Program. Hearings, 87th Cong., 1st sess., 1961, p. 230.

> authority vested in him under the law to prescribe the standards and to make the determinations essential for the protection of the wages and working conditions of domestic agricultural workers.[57]

In response to this direction, the Labor Department held public hearings in all States using foreign workers, and in May 1962 set an adverse-effect rate for each State which employers were required to offer foreign workers. Adverse-effect rates were the minimum wage rates which the Department of Labor determined had to be offered and paid by the employers of temporary alien agricultural workers in order to prevent their employment from having an adverse effect on the wages of U.S. workers who were similarly employed.

In the majority of cases, the adverse-effect rates were higher than the prevailing rates. Where piece rates were paid, the hourly earnings had to equal the established adverse-effect rates. Since U.S. employers were required to offer domestic workers wages equal to foreign workers as a prerequisite for labor certification, these adverse effect wage scales were also applicable to domestic workers in cases where farmers intended to seek foreign workers.

An unamended 1-year extension of the bracero program—the last—was enacted in 1963. This was the final outcome of a long and complicated struggle between those in favor of extending the program and those who wanted to either end it outright, or to extend it with amendments which in the opinion of its supporters would have had the same effect as termination.

In 1963, the Kennedy administration proposed a 1-year extension of the bracero program. A 2-year extension was defeated in the House on May 29, 1963, by a vote of 158–174. On August 15, a 1-year extension with amendments favored by the Labor Department but opposed by the growers, passed the Senate by a vote of 62–25. An unamended 1-year extension passed the House on October 31 by a vote of 173–160, and the Senate agreed to the House provisions, by 50–36, on December 4, 1963. The bill, extending Public Law 78 until December 31, 1964, without amendment, was signed into law December 13, 1963 (Public Law 88–203).

After the House defeat in May of the 2-year extension, the legislative alternatives presented to the proponents of the bracero program were quite limited. They were essentially given their choice of a 1-year extension, with or without amendments, or nothing. In bringing the bill to the Senate floor, Senator Ellender promised that he would not seek a further extension of the program in 1964. No attempt was made by the Congress to extend the bracero program beyond the end of 1964 and no serious attempt has been made since then to revive it.

During the last extension battle in 1963, the State Department was the program's most enthusiastic supporter within the Kennedy administration. A State Department representative, Mr. Robert Sayre, Acting Director of the Office of Carribean and Mexican Affairs, testified before a subcommittee of the House Committee on Agriculture that the State Department favored extension of Public Law 78 "at least for a year beyond the present date of expiration." [58] He indicated

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[57] Quoted in S. Rept. 391, 88th Cong., 1st sess., 1963, p. 13.
[58] U.S. House. Committee on Agriculture. Mexican Farm Labor Program. Hearings, 88th Cong., 1st sess., March 1963, p. 40.

that "the program has been beneficial to Mexico; and, therefore, from our point of view, the continuation of the program is desirable." [59] However, he emphasized the State Department's deferral to the Department of Labor and "other interested departments," noting that "this is essentially a domestic matter." [60]

During his discussion of international considerations relating to the bracero program, Mr. Sayre stressed the importance of the duly negotiated government-to-government agreement, the "importance of the program to the economy of Mexico," and the fact that "the program also provides an important source of temporary employment for many thousands of Mexican workers." Further:

> The Department of State does not cite these economic factors as reasons for indefinite continuation of a program. Both Governments recognize the program as a temporary one. The Mexican Government naturally desires to have its citizens contribute directly to the development of the country rather than indirectly through the remittance of wages. It is trying vigorously to provide employment for all of its people. Under the Alliance for Progress we are seeking to help Mexico achieve that objective. The loan of $20 million in 1962 to spur agricultural production through the provisions of adequate credit to small farmers was made with this objective in mind. The International and Inter-American Bank have made other loans which contribute to the same end.
>
> But, I would also want to note that the sudden loss of the dollar income of Mexican workers would be a serious blow to their family income and constitute a significant loss of foreign exchange to Mexico.[61]

Mr. Sayre was asked whether "there are now and have been for some time many Mexicans who desired to come to this country to work, that they will come in, if possible in any one of three ways. One, under our Public Law 78 program, or by visa, or illegally?" [62] He responded, "the number of visa applicants and the number of people desiring to come in under this program would indicate that the answer to your question would, probably, be affirmative." Earlier, in his prepared statement, Mr. Sayre had indicated that the number of jobs available under the bracero program was exceeded by the number of Mexican workers seeking employment with it, and that many of them then sought entry as immigrants. He indicated that the pending applications for immigrant visas at the consular offices in Mexico had increased from 63,475 at the end of 1961 to 140,511 at the end of 1962.[63] This was during a period when the number of admissions under the bracero program was decreasing.

In response to a request for comments on pending legislation, Assistant Secretary of State Frederick G. Dutton indicated in a letter dated August 13, 1963, that the Department of Labor was "primarily responsible for formulating the position of the executive branch" on the bracero program, and that the Department of State supported the

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[59] Ibid., p. 45.
[60] Ibid.
[61] Ibid., pp. 39–40.
[62] Ibid., p. 41.
[63] Ibid., p. 39.

Secretary of Labor's recommendation that the program be extended for a year with an amendment. Assistant Secretary Dutton noted further:

> As long as in the opinion of the Department of Labor, other interested departments, and the Congress, it is desirable to recruit Mexican workers for agricultural employment in the United States, it is the view of the Department of State that, in the interests of good relations with Mexico and our international responsibilities, such recruitment should continue to be carried on under the provisions of P.L. 78 and the complementary intergovernmental agreement with Mexico. This view is also shared by the Government of Mexico, as evidenced by a recent note from the Mexican Ambassador, a translation of which is attached for your information.[64]

The note referred to, expressing the views of the Government of Mexico was dated June 21, 1963, and had previously been inserted in the Congressional Record in its entirety by Senator William Fulbright.[65] It consisted of a lengthy, strong protest of the House defeat of a 2-year extension of Public Law 78. Quoting from the opening of the statement:

> The Government of Mexico considers that there would be no call for any observation whatever concerning the aforesaid action, had the need for Mexican labor that has existed for a number of years among the farmers in various parts of the United States disappeared, or if systems other than those used so far were available to meet that need. It is not to be expected that the termination of an international agreement governing and regulating the rendering of service by Mexican workers in the United States will put an end to that type of seasonal migration. The aforesaid agreement is not the cause of that migration; it is the effect or result of the migratory phenomenon. Therefore, the absence of an agreement would not end the problem but rather would give rise to a de facto situation: the illegal introduction of Mexican workers into the United States, which would be extremely prejudicial to the illegal workers and, as experience has shown, would also unfavorably affect American workers, which is precisely what the legislators of the United States are trying to prevent.[66]

The Mexican Ambassador also noted that in past discussions of phasing out the bracero program, Mexican representatives had requested that it be done gradually in order to allow Mexico the opportunity to reabsorb the workers. Approximately 200,000 would be out of work if the contracting stopped at the beginning of 1964.[67]

This action by the Mexican Government played a major role in the decision by Congress to extend the bracero program for an additional year in 1963 to allow for a more gradual phasedown. According to Richard Craig, it was probably the deciding factor:

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[64] House Rept. 722, 88th Cong., 1st sess., 1963, p. 6.
[65] Congressional Record, vol. 109, Aug. 15, 1963: 15203–15204.
[66] Ibid. Also reprinted in Kiser and Kiser, eds., Mexican Workers in the United States, Albuquerque, University of New Mexico press, 1979, pp. 120–121. (Further citations are to Letter from the Mexican Ambassador, 1963; Kiser (1979).)
[67] Ibid., p. 122.

On May 29, 1963, when the House of Representatives voted not to extend Public Law 78, it appeared that the bracero program would end as of December 31, 1963. At this stage, however, a fundamental change occurred in the long-held Mexican attitude of official ambivalence toward bracero contracting. Analysis of President Kennedy's remarks in signing the 1961 extension of Public Law 78 revealed the presence of subtle, behind-the-scenes Mexican pressure in favor of prolongation. There was nothing subtle in the Mexican action of June 1963. Combined with pressure from domestic growers, the Mexican stance of 1963 ensured the bracero program an additional year's longevity. Had it not been for its diplomatic ramifications, the bracero program would not have been extended beyond 1963, and perhaps not beyond 1961.[68]

(3) Summary of major issues

The letter of June 21, 1963, from the Mexican Ambassador protesting the apparently imminent termination of the bracero program is of particular interest because of the light it sheds on the Mexican view of perhaps the three major issues raised by the bracero program during its lengthy and controversial history. These were its impact on domestic workers, discrimination against the imported workers, and illegal immigration. The following is a brief summary of the Mexican view, as presented by its Ambassador in mid-1963, as well as other views of these basic issues.

Regarding the issue of the impact of the imported workers on the domestic workforce, the Mexican Ambassador argued that far from harming domestic workers, the wages and working conditions required for the braceros had set a beneficial pattern for U.S. workers. The argument that the presence of the braceros benefited rather than adversely affected domestic workers is, of course, debatable, as documented in 1951 by President Truman's Commission on Migratory Labor and in 1959 by the consultants' committee appointed by the Secretary of Labor.

The Mexican Ambassador wrote that, "The benefits granted the contracted braceros, in the matter of insurance covering occupational accidents and illness, the extremely careful regulations on lodgings and transportation, and the constant inspection of food have provided a pattern that can be followed for domestic workers who lack such protection." [69] To the extent that this is true, it recalls the angry charge of the Truman Commission in 1951 "that it has been the negotiators for foreign governments, notably of Mexico, rather than our own representatives, who have secured reasonable limitation of numbers and some protection to labor standards. While their motive is primarily to protect the standards of their own nationals working in the United States, the effect of their concern, fortunately, is also to help sustain the tenets of American policy." [70]

The Mexican Ambassador was also sanguine regarding the issue of discrimination against the imported workers, one of the most difficult problems afflicting the Mexican farm labor program during the 1940's. Quoting from his letter:

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[68] Craig (1971), pp. 195–196.
[69] Letter from the Mexican Ambassador, 1963; Kiser (1979), p. 122.
[70] Report of the President's Commission on Migratory Labor, 1951, p. 64.

> The virtual extinction of discrimination against and segregation of persons of Mexican nationality in areas of the United States where such practices once existed can decisively be attributed to the contracting of Mexican workers under international agreements. The need for labor which only the Mexican could supply but which was not authorized for localities where special schools were maintained for Mexicans, or where they were segregated in restaurants, theaters, etc., and discriminated against in respect of wages, etc., led the authorities concerned to put an end to that situation.
>
> There is no doubt that this has been a firm foundation for the good relations between the peoples of the two countries.[71]

As with the impact of the bracero program on domestic workers, its impact on Mexican workers in terms of reducing discrimination is also the subject of disagreement. Writing many years later, Jorge Bustamante claimed that, "The history of the Bracero program did not accomplish one of the goals as conceived by the Mexican government, namely, eliminating discrimination and exploitation of the Mexican worker." [72]

In the opinion of the Mexican Ambassador, the most important issue was that of illegal migration. He saw the resurgence of this problem as virtually inevitable if the bracero program were terminated, and he saw it as posing a far greater threat to the welfare of both U.S. and Mexican workers than did the legal program. Thus, he wrote:

> It was precisely the presence of the "wetbacks" in the fields of the United States that created a situation undesirable from every standpoint, since those persons have not even the most elementary kind of protection and were the victims of exploitation with respect to wages, because they were forced to accept whatever pay was offered to them, and domestic workers were unable to compete and found themselves compelled to move to other areas. The lack of an agreement to facilitate contracting as long as there is a shortage of farm labor, which the Mexican workers have been covering, would tend to bring about a return to that situation.[73]

Apprehension of illegal entrants began mounting steadily with the termination of the bracero program in the mid-1960's as shown in table 3. Quoting from the INS 1970 annual report:

> Since the expiration of the Mexican Agriculture Act on December 31, 1964, the number of deportable aliens located has continued an upward climb. For the 6-year period, FY 1965 through FY 1970, 71 percent of the 1,251,466 total deportable aliens located were of Mexican nationality. Year by year, the annual percentage of this nationality group has risen, from 50 percent in 1965 to 80 percent this year.[74]

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[71] Letter from the Mexican Ambassador, 1963; Kiser (1979), p. 123.
[72] Bustamante, Jorge A. Commodity—Migrants: Structural Analysis of Mexican Immigration to the United States. Stanley R. Ross, ed. Views Across the Border. Albuquerque, University of New Mexico press, 1978; p. 195.
[73] Letter from the Mexican Ambassador, 1963; Kiser (1979), pp. 122–123.
[74] U.S. Department of Justice. Annual Report of the Immigration and Naturalization Service, 1970, p. 11.

The patterns of employment which grew up during the bracero period, as well as the elimination of the legal channels for temporary employment provided by the program, are viewed by many as significant factors in the current illegal migration problem. On the other hand, Vernon Briggs notes that the extent of the causal relationship can be overdrawn:

> Paralleling the *bracero* years during the 1950's and early 1960's and following them since 1964 has been the mammoth flow of illegal Mexicans. Undoubtedly, many of these illegal aliens were former *braceros*. They had been attracted to the Mexican border towns from the rural interior of central and northern Mexico by the existence of the former contract labor program. To this degree, there is some truth to the proposition that the United States itself has created the illegal alien problem. By the same token, however, it is simplistic to conclude that the problem would not eventually have surfaced in the absence of the Bracero Program.[75]

History appears to indicate that the bracero program only served to reduce illegal migration when it was combined with both a massive law enforcement effort ("Operation Wetback") and an expansion of the farm labor program to the point where it almost certainly had an adverse impact on the wages and working conditions of domestic workers in certain "dominated" areas and occupations. Whether or not this impact could have been avoided by a more effective structuring and administration of the program is a key question in any consideration of a future expanded temporary alien worker program.

C. Admission of Temporary Workers Under the Immigration and Nationality Act

With the exception of the Mexican bracero workers, all other temporary alien workers have been admitted under the terms of Public Law 414, the Immigration and Nationality Act of 1952, as amended,[76] since it went into effect on December 24, 1952. By definition, aliens entering for the express purpose of performing temporary labor are nonimmigrants, as opposed to immigrants, who are admitted permanently and are free to change occupations upon entry, even if they entered under one of the occupational preferences.

1. THE H–2 TEMPORARY WORKER PROVISION

Although aliens entering under some of the other nonimmigrant classifications may also accept employment under specified conditions, as discussed below, the temporary admission of most foreign workers under the Immigration and Nationality Act is governed by section 101(a)(15)(H) and section 214(c).

Section 101(a)(15)(H) is one of the 12 categories of nonimmigrants defined by the Immigration and Nationality Act. It provides for the entry of three subcategories of temporary workers, as follows: (i) persons of distinguished merit and ability, (ii) other temporary workers, and (iii) trainees. The second subcategory, the so-called H–2

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[75] Briggs, Vernon M. Labor Market Aspects of Mexican Migration to the United States in the 1970's. Ross, Views Across the Border. University of New Mexico press, 1978, p. 207.

[76] Public Law 414, 82d Cong.; 66 Stat. 163; 8 U.S.C. 1101 et seq.

provision, is the most frequently used and is the primary subject of the following discussion. It reads as follows:

> (H) an alien having a residence in a foreign country which he has no intention of abandoning * * * (ii) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession * * *.

Section 214(c) authorizes the Attorney General to make determinations regarding the importation of aliens under section 101(a)(15)(H), upon petition from the importing employers. "Consultation with appropriate agencies of the Government" is also required. The statutory language, unamended since 1952, follows:

> (c) The question of importing any alien as a nonimmigrant under section 101(a)(15)(H) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant.

In the case of the H–2 worker, a reasonably formalized procedure for Justice Department consultation with the Department of Labor has been set forth with varying degrees of detail in the regulations intermittently since 1953.[77] The major Labor Department agencies involved have been, successively, the U.S. Employment Service, the Bureau of Employment Security, and the U.S. Employment Service of the Manpower Administration and, currently, of the Employment and Training Administration. At the local level, the State employment service is affiliated with the U.S. Labor Department. The term "State employment service" refers to a series of federally assisted public employment agencies in the States and territories established under the provisions of the Wagner-Peyser Act of 1933.

According to the usual procedures now and in the past, the initial action on the H–2 employer's application is made by the local office of the State employment service. This includes a recommendation regarding the availability or unavailability of domestic workers. This action must be approved by the U.S. Labor Department, and may be overruled by the Department of Justice, since the Attorney General has final authority regarding the admission of H–2 workers.

Of the 46,675 "H" entries in fiscal year 1977, 15,702 were "H–1's", 27,760 were "H–2's", and 3,213 were "H–3's". Regarding countries of origin in fiscal year 1977, the single largest number of H–2 entries came from Jamaica—10,650, followed by 4,493 from Canada, and 2,070 from the Philippines (see table 4). Mexican H–2 entries were 1,089 in fiscal year 1978, up from 977 in fiscal year 1977, and 761 in fiscal year 1976.

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[77] For INS regulations promulgated Dec. 18, 1952, see 8 CFR 214h, U.S. Code Congressional and Administrative News, 1953, pp. 2505–2507. For current regulations, see 8 CFR 214.2(h)(3) (INS, Department of Justice) 1 and 20 CFR 655 and 20 CFR 621 (Employment and Training Administration, Department of Labor).

TABLE 4.—TEMPORARY WORKERS ADMITTED UNDER SEC. 101(a)(15)(H), IMMIGRATION AND NATIONALITY ACT, BY COUNTRY OR REGION OF LAST PERMANENT RESIDENCE,[1] YEARS ENDED SEPT. 30, 1977, AND JUNE 30, 1976

Country or region of last permanent residence	1977				1976			
	Total	Workers of distinguished merit and ability (H(i))	Other temporary workers (H(ii))	Industrial trainees (H(iii))	Total	Workers of distinguished merit and ability (H(i))	Other temporary workers (H(ii))	Industrial trainees (H(iii))
All countries	46,675	15,702	27,760	3,213	47,387	14,831	29,778	2,778
Europe	9,114	6,490	1,155	1,469	8,817	6,480	1,147	1,190
Austria	176	78	74	24	291	224	55	12
Belgium	314	242	25	47	202	143	9	50
Denmark	71	56	4	11	190	158	8	24
Finland	74	49	6	19	103	78	11	14
France	809	560	84	165	600	318	137	145
Germany	972	702	37	233	918	694	29	195
Greece	170	116	51	3	207	98	97	12
Ireland	244	168	25	51	225	147	44	34
Italy	507	371	53	83	335	243	40	52
Netherlands	243	155	15	73	272	189	10	73
Norway	69	29	16	24	148	107	10	31
Poland	260	196	55	9	302	262	38	2
Portugal	125	34	73	18	68	28	32	8
Spain	536	343	169	24	573	396	144	33
Sweden	232	156	19	57	331	253	17	61
Switzerland	348	213	26	109	289	134	30	125
United Kingdom	3,109	2,229	370	510	2,980	2,270	399	311
Yugoslavia	164	121	40	3	170	135	32	3
Other Europe	691	672	13	6	613	603	5	5
Asia	6,781	2,413	3,834	534	4,572	2,273	1,736	563
China and Taiwan	388	230	123	35	161	29	103	29
Hong Kong	72	34	18	20	55	26	7	22
India	266	194	61	11	227	178	30	19
Iran	44	11	13	20	21	2	7	12
Israel	303	166	90	47	265	142	96	27
Japan	1,000	322	505	173	1,088	375	421	292
Korea	992	28	914	50	510	197	278	35
Lebanon	41	13	10	18	40	9	18	13
Philippines	3,446	1,336	2,070	40	1,987	1,198	754	35
Thailand	11	7	----------	4	18	8	2	8
Turkey	34	15	14	5	55	48	1	6
Other Asia	184	57	16	111	145	61	19	65
Africa	550	187	70	293	534	331	39	164
South Africa, Republic of	153	107	9	37	84	55	10	19
Other Africa	397	80	61	256	450	276	29	145
Oceania	512	282	63	167	461	178	163	120
Australia	313	185	22	106	248	133	46	69
New Zealand	114	43	21	50	90	33	19	38
Pacific Islands (U.S. administration)	12	----------	2	10	12	----------	1	11
Other Oceania	73	54	18	1	111	12	97	2
North America	28,323	5,506	22,283	534	31,713	4,887	26,280	546
Canada	8,629	3,883	4,493	253	8,992	2,879	5,848	265
Mexico	2,011	904	977	130	1,746	871	761	114
Anguilla	225	1	224	----------	----------	----------	----------	----------
Antigua	1,201	13	1,187	1	1,737	19	1,718	----------
Bahamas	65	13	26	26	25	8	5	12
Barbados	770	27	734	9	685	24	652	9
Bermuda	9	2	5	2	17	7	8	2
British Virgin Islands	148	7	135	6	287	4	283	----------
Dominica	295	10	285	----------	618	7	611	----------
Dominican Republic	653	275	335	43	945	386	524	35
Haiti	40	12	28	----------	76	6	60	10
Jamaica	10,796	139	10,650	7	9,591	245	9,325	21
Netherlands Antilles	50	7	43	----------	77	14	63	----------
St. Christopher	1,821	52	1,767	2	4,421	33	4,386	2
St. Lucia	852	1	851	----------	1,062	4	1,058	----------
Trinidad and Tobago	170	65	97	8	322	107	211	4
Belize	5	----------	2	3	14	1	13	----------
Costa Rica	56	15	27	14	90	9	41	40

See footnote at end of table.

TABLE 4.—TEMPORARY WORKERS ADMITTED UNDER SEC. 101(a)(15)(H), IMMIGRATION AND NATIONALITY ACT, BY COUNTRY OR REGION OF LAST PERMANENT RESIDENCE,[1] YEARS ENDED SEPT. 30, 1977, AND JUNE 30, 1976—Continued

Country or region of last permanent residence	1977				1976			
	Total	Workers of distinguished merit and ability (H(i))	Other temporary workers (H(ii))	Industrial trainees (H(iii))	Total	Workers of distinguished merit and ability (H(i))	Other temporary workers (H(ii))	Industrial trainees (H(iii))
El Salvador	88	9	75	4	78	9	59	10
Guatemala	38	13	18	7	159	63	90	6
Honduras	8	3	4	1	46	4	35	7
Nicaragua	44	8	32	4	32	11	16	5
Panama	79	25	45	9	208	166	40	2
Other North America	270	22	243	5	485	10	473	2
South America	1,395	824	355	216	1,290	682	413	195
Argentina	206	150	17	39	263	194	34	35
Bolivia	12	11	----------	1	9	5	----------	4
Brazil	255	172	39	44	215	138	17	60
Chile	101	72	9	20	93	67	10	16
Colombia	256	144	88	24	204	73	101	30
Ecuador	89	32	44	13	64	5	53	6
Guyana	41	6	21	14	42	8	25	9
Peru	136	88	37	11	195	121	59	15
Uruguay	22	12	5	5	33	22	9	2
Venezuela	276	136	95	45	163	41	105	17
Other South America	1	1	----------	----------	9	8	----------	1

[1] Change in fiscal year occurred in 1977. Data for transition quarter, July 1 through Sept. 30, 1976, is printed in 1976 annual report.

H–2's enter temporarily for jobs which are themselves temporary in nature. Because they cannot be employed in jobs which are of an ongoing nature, they are not surprisingly heavily concentrated in seasonal agricultural activities and in show business and professional sports. The single largest group of H–2's admitted in fiscal year 1977 were farm laborers—11,421.

These were followed by writers, artists, and entertainers (5,479), a classification which, when combined with the H–1 entries (6,709), outnumbered farmworkers. Other major occupational categories accounting for H–2 entries in fiscal year 1977 were musicians and composers (3,586), athletes (1,385), and lumbermen (1,121).

While the number of H–2 entries is not large, their impact tends to be concentrated in certain areas and occupations—for instance, apple picking on the east coast, sugar cane cutting in Florida, and construction work in Guam. Quoting from a recent study:

> The mass-admitted H–2 nonimmigrants are concentrated in two clusters: the rural and island [Guam and the U.S. Virgin Islands] workers, on one hand, and the entertainers and athletes, on the other. The latter cluster, particularly those in show business, is admitted at wages set by collective bargaining and is of no particular concern to us.
>
> The former cluster includes about 10,000 sugar cane cutters, a smaller and overlapping group of Jamaican apple pickers, the 1,000 or so Maine woodsmen (largely French-Canadians), and about as many sheepherders (Basques and Hispanics). It also includes a couple of thousand Asian

construction workers in Guam and roughly 7,000 natives of the "down islands" working in the Virgin Islands.[78]

Many of the arguments about the impact of H–2's in the areas and industries in which they are concentrated closely resemble those of the bracero era. The employers argue that a genuine shortage of domestic workers exists, which the Labor Department is often reluctant to acknowledge because of its institutional concern with unemployment. On the other hand, critics of the H–2 provision and its administration, particularly as it pertains to agricultural workers, argue that H–2 workers depress wages, cause some displacement of resident workers due in part to employer preference, and result in an inherently undemocratic two-class labor force.[79] Regarding this latter point, it has been observed that "the mass-admitted nonimmigrant workers have the same general characteristics of the braceros of our past and the European guest workers of today, in that they are legal alien workers with some rights but with considerably fewer rights than those of citizens and resident alien workers."[80]

The major differences between the H–2 provision and the bracero program are that the H–2 provision is a permanent part of the law, not intended to meet a specific national manpower shortage; that the numbers admitted under the provision have been significantly smaller—27,760 H–2's in fiscal year 1977, compared to 436,049 braceros 20 years earlier in 1957; that, while it is limited to temporary employment, it is not specifically limited to agricultural work; and that it is not reinforced by international treaty, as was the bracero program.

Another significant difference has been that a relatively small number of Mexicans has been admitted under the H–2 provision; this is despite the fact that, unlike Public Law 78, the H–2 provision has no geographic restrictions. The limited number of Mexican H–2's has been partly the result of administrative determinations by the U.S. Labor Department, either that domestic workers have been available in the areas and occupations for which Mexican workers have been requested, or that employers have failed to meet the requirements of the regulations governing the importation of H–2's. Thus, the decision to admit Mexican onion pickers into Presidio, Tex., in June 1977, reportedly at the urging of President Carter,[81] was contrary to the recommendation of the Labor Department.

Apart from the ongoin controversy which has surrounded the H–2 provision in recent years, particularly regarding the admission of Jamaicans to pick apples on the east coast, the provision is of particular interest at this time because its expansion is one of the options under consideration as an alternative to illegal migration for temporary employment. While this option is considered in more detail subsequently, it should be noted at the outset that greatly increasing the number of H–2 admissions would require fundamental changes in both the assumptions which govern the admission of the workers, and the administration of the provision. Thus, it is difficult to predict from past experience what future experience under a significantly

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[78] North, David, and Allen Lebel. Manpower and Immigration Policies in the United States. Special Report No. 20. Washington, National Commission for Manpower Policy, February 1978, p. 176.
[79] E.g., ibid., pp. 174–184.
[80] Ibid., p. 179.
[81] Shabecoff, Philip. Mexican Workers Being Admitted After Reported Carter Intervention. New York Times, June 21, 1977; p. 1, 13.

enlarged program would be likely to be because, by definition, it would be a significantly different program.

A brief general discussion of the history of the H–2 provision and of its operations under the current regulations is followed below by a consideration of major programs which have operated under the jurisdiction of the H–2 provision.

a. Overview: Legislative and administrative history of the H–2 provision

The H–2 provision evolved from a combination of the fourth and ninth provisos to section 3 of the Immigration Act of 1917. Section 3 sets forth a list of inadmissible aliens, including contract laborers. The fourth proviso authorized the Attorney General to grant waivers of the exclusion clause regarding skilled contract laborers upon a finding that "labor of like kind unemployed can not be found in this country." The ninth proviso allowed for a waiver of excludability for inadmissible aliens, including contract laborers, for temporary entry, and was the principal authority for the admission of agricultural worker during the periods before and after the enactment of special legislation for that purpose during World War II. Administrative procedures developed jointly in 1948 by the Commissioner of the Immigration and Naturalization Service and the Director of the U.S. Employment Service required that before such a waiver could be issued, the need for the workers had to be investigated by INS and certified by the U.S. Employment Service; and it had to be shown that their admission would not displace or otherwise detrimentally affect labor in this country.[82]

In 1950 the Senate Judiciary Committee considered temporary agricultural workers in its comprehensive report entitled "The Immigration and Naturalization Systems of the United States." The committee found "that the agricultural labor supply in the United States, particularly in the Southwestern States, requires supplementation," and made the following recommendation:

> * * * provisions should be made in permanent legislation which would permit the admission of temporary agricultural labor in a nonimmigrant classification when like labor cannot be found in this country. The determination of the necessity for the importation of such labor in any particular instance should be made by the Commissioner of Immigration and Naturalization upon application by the interested employer before the importation and after a full investigation of the facts and consultation with appropriate agencies.[83]

This recommendation was essentially enacted into law as the H–2 provision of the Immigration and Nationality Act of 1952—and remains in effect today—with the very important omission of the Mexican agricultural labor program. Beginning in 1951 the Mexican program was authorized by separate legislation, Public Law 78, until its expiration on December 31, 1964.

Regulations published by the Justice Department's Immigration and Naturalization Service require Labor Department certification of the unavailability of domestic workers as a prerequisite for admitting H–2 workers, thus following the pattern established during the initial period of the temporary foreign labor programs, and after

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[82] S. Rept. 1515, 81st Cong., 2d sess., 1950, p. 578.
[83] Ibid., p. 586.

1947.[84] Labor Department certifications in the case of H–2 workers are advisory only, and may be overridden by the Justice Department, which has final authority. The H–2 provision differed in this respect from those governing the bracero program, under which the role of the Labor Department was considerably more extensive. This difference was explained as follows by a Labor Department representative during 1963 hearings:

> In all foreign-labor programs we have the responsibility for certification as to need and as to the conditions of employment. In other words, we certify that the conditions of employment of the temporary entrants will not adversely affect domestic workers similarly employed.
>
> In the Mexican program, we also have responsibility for carrying out the international agreement and the standard work contract. What this means is that we have the compliance responsibility * * *.
>
> In the other foreign-labor programs, our only responsibility is the certification as to the need for the workers, and that they will not adversely affect the domestics. Responsibility for the enforcement of that contract then falls within the purview of the Immigration and Naturalization Service.[85]

According to the House Judiciary Committee report on the 1952 legislation, the purpose of the section 101(a)(15)(H) temporary worker provision and section 214(c), which provides for its administration by the Attorney General, was to "grant the Attorney General sufficient authority to admit temporarily certain alien workers, industrial, agricultural, or otherwise, for the purpose of alleviating labor shortages as they exist or may develop in certain areas or certain branches of American productive enterprises, particularly in periods of intensified production."[86] While there have been a number of attempts to amend the H–2 provision, to date it has been amended only once since 1952, in 1976 by the addition of language relating to foreign medical graduates. Additionally, an amendment to section 101(a)(15)(H) enacted in 1970 permits the entry of the "H" temporary worker's spouse or minor children if they are accompanying him or following to join him. A brief review of efforts to modify the H–2 provision follows.

The first such effort related to the administration of the H–2 provision and stemmed directly from the termination of the bracero program. It was generally assumed by proponents of the program during the 1963 debates that, barring insuperable objections by the Mexican Government, the importation of Mexican workers would continue under the authority of Public Law 414, the Immigration and Nationality Act. During House hearings in 1963 an INS official, Mr.

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[84] Responsibility for H–2 advisory certification was specifically vested in the U.S. Labor Department by regulation from 1953 until December 1954 (19 F.R. 9172), and from August 1964 (29 F.R. 11956) until the present time (8 CFR 214.2(h)(3)). During the intervening 10-year period, INS regulations required that H–2 petitions be filed on form I–129B, and instructions accompanying this form stated that it must be accompanied by a copy of "a clearance order from the U.S. Employment Service concerning the availability of like labor in the United States, and stating that Employment Service policies have been observed." The statutory basis for the Labor Department's involvement is the requirement for consultation by the Attorney General with appropriate agencies set forth in section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)).

[85] U.S. Congress. House. Committee on the Judiciary. Study of Population and Immigration Problems. Special Series No. 11, 1963, p. 2.

[86] H. Rept. 1365, 82d Cong., 2d sess., 1952, pp. 44–45.

Irvin Shrode, indicated that "through an agreement, I think an executive agreement made a number of years ago between the committees involved, no effort has been made to extend Public Law 414 to Mexican national workers so long as a special statute is on the books, to wit, Public Law 78." [87] In response to questioning, Mr. Shrode agreed that, in the absence of Public Law 78, there was nothing in Public Law 414 that would prohibit the importation of Mexican labor. The point was also made in a 1963 Senate report that, "If Public Law 78 should not be extended, they [Mexican farmworkers] could also enter as nonimmigrants under sections 101(a)(15)(H) and 214 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H) and 1184)." [88]

In fact, however, on December 19, 1964, Secretary of Labor Willard Wirtz published regulations which made it clear that it was not the intention of the Labor Department that the bracero program continue under the auspices of the H–2 provision of Public Law 414. In his statement accompanying the proposed regulations, Secretary Wirtz wrote:

> The issuance of the new Regulations is essential to the orderly administration of Public Law 414, but it does not imply that there will be any large scale use of foreign workers in the future. To the contrary. It is expected that such use will be very greatly reduced, and hopefully eliminated. [89]

The regulations required that, as a prerequisite for requesting foreign workers, employers must offer domestic workers wages which were substantially higher than the wages employers previously had been required to offer domestic workers in order to petition for Mexican or other foreign workers. The regulations also required that U.S. workers be offered other benefits, such as minimum housing, transportation, and insurance, which had generally been offered to braceros. In addition, certification was limited to 120 days, to emphasize "that the only justification for bringing in labor is to meet special peak conditions in the highly seasonal agricultural industry." [90]

The regulations were the subject of hearings before the Senate Committee on Agriculture and Forestry on January 15 and 16, 1965. Secretary Wirtz indicated that he interpreted the congressional intent in ending the bracero program as a desire to reduce the country's dependence on imported labor. He expressed his complete agreement with this goal in view of rising unemployment and the generally depressed wages and working conditions in agriculture as compared to the rest of the economy. He indicated further that the regulations were intended to be a very strict interpretation of the statutory requirement in Public Law 414 that "unemployed persons capable of performing such services or labor cannot be found in this country," in order for foreign workers to be admitted.

In a key question, Senator Kuchel of California asked the Secretary of Labor:

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[87] U.S. Congress, House. Committee on Agriculture. Mexican Farm Labor Program. Hearings, 88th Cong., 1st sess., 1963; p. 53.
[88] S. Rept. 391, 88th Cong., 1st sess., 1963; p. 2.
[89] U.S. Department of Labor. Year of transition: Seasonal farm labor 1965. A Report from the Secretary of Labor [1966], p. H–4.
[90] Ibid.

I share your desire to have the maximum number of our fellow citizens again fully employed who are now unemployed, but I do not see the difference between that condition which was a condition precedent under Public Law 78, and Public Law 414 and the sections to which you refer. In other words, what would the difference be between your conceded duty under the law to make those decisions under Public Law 78 last year and under the Immigration Act this year? [91]

Secretary Wirtz replied, in part:

I think it goes very close to the heart of the most difficult problem here. And the answer to it would necessarily include these factors. It would include the factor of the intention of the Congress in terminating Public Law 78, which with its legislative history I think can only be interpreted as requesting or as indicating a proposed different treatment of this situation with the legislative record being quite clear, of clear indications, that the Congress wanted this importation if not stopped completely, certainly cut way down, and this would be a large part of my answer to your question. A fuller part of it would necessarily include recognition of the fact that we are taking a much closer look at this situation today than we did perhaps in the accumulated experience under Public Law 78, and I make the point not from sentiment but from straight economics that our largest concern, so far as the Department of Labor is concerned, is that we may in this country let unemployment become a reality because we first let it become a habit, and there has been now almost 7 years of unemployment over 5 percent. I think it is time we look again to see what we can do to lick that problem. [92]

In the spring of 1965 the Labor Department's regulations were unsuccessfully challenged in court in the Florida case of *Chase Glades Farms* v. *Wirtz*, Civil No. 65–86 (M.D. Fla., filed May 5, 1965). Florida celery growers filed an action to restrain and enjoin the Secretary of Labor from refusing to extend certification for celery cutters from April 30 to June 15, 1965, arguing that the Labor Department's action in refusing to extend the certification was arbitrary, capricious, and would cause irreparable losses of the celery crop. The trial court refused to issue a restraining order on the grounds that the Secretary of Labor was performing an advisory function which was not subject to injunction:

This court concludes that under the law * * * the Secretary of Labor, his subordinates and the agancies of the Department of Labor are not vested with any authority to grant or deny the admission or the continuance in this country of any nonimmigrant laborer. Because of that, the determinations made by the Secretary of Labor in connection with such matters are solely advisory and can be accepted or rejected

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[91] U.S. Congress. Senate. Committee on Agriculture and Forestry. Importation of Foreign Agricultural Workers. 89th Cong., 1st sess., 1965, p. 69.
[92] Ibid.

by the Attorney General in the exercise of his statutory authority on this subject. The giving of such advice is not subject to injunction.[93]

Finally, Senator Holland sponsored an amendment, accepted in committee, to the Food and Agriculture Act of 1965, which would have legislatively transferred the advisory certification responsibility regarding the importation of foreign farm workers from the Department of Labor to the Department of Agriculture. A heated Senate debate on this provision occurred in response to a floor amendment offered by Senator Bass of Tennessee to delete section 703, containing Senator Holland's committee amendment, from the bill. Senator Bass' amendment, deleting the transfer of the certification function from the Labor Department to Agriculture, passed by a vote of 46 to 45, with the initial tie vote broken by Vice President Hubert Humphrey.[94]

The chief proponents of the transfer of the certification authority from Labor to Agriculture were Senators from Florida and California, according to Senator Holland, "the two States most affected by the present arbitrary actions of the Secretary of Labor."[95] While there was considerable discussion of the jurisdictional issues involved, in terms of both Cabinet-level Departments and committee responsibilities, many of the key issues were, as Senator Harrison Williams noted, similar to those raised during the recent debates over the bracero program.[96] These included the issues of whether there were, in fact, sufficient domestic farm workers without a supplementary foreign farm labor program; and whether such a program would have an adverse impact on domestic agricultural wages and working conditions. These arguments were restated in the specific context of what Senator Holland and his supporters saw to be the arbitrary and capricious actions of, quoting Senator Holland, "this idealistic, evangelistic Secretary of Labor, who thinks he has authority to set wages."[97]

Senator Holland was particularly disturbed by the disruption of the BWI program, which was widely used in Florida; as well as with what he saw to be the violation of the express congressional intent that Mexican workers be admitted under Public Law 414 after the expiration of Public Law 78.[98] It was generally argued that the Secretary of Agriculture not only would be more sympathetic to the needs of agriculture, but was also in a better position to gauge those needs and evaluate them for the Attorney General. In defense of the Secretary of Labor, Senator Muskie argued that, despite an initial determination to eliminate the foreign workers, Secretary Wirtz had clearly adopted a more realistic attitude as the year had progressed: "When we were able to demonstrate that there were not sufficient laborers available, the Secretary authorized importation of Canadian workers." He opposed the transfer of certification authority to the Department of Agriculture, stating "I do not think it is administratively sound to place a labor supply and working

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[93] Quoted in Congressional Record, Sept. 13, 1965: 23511. The case is summarized and discussed by Senator Spessard Holland on p. 23510.
[94] Food and Agriculture Act of 1965. Congressional Record, Sept. 13, 1965: 23504–23530.
[95] Ibid., p. 23509.
[96] Ibid., p. 23515.
[97] Ibid., p. 23509.
[98] Ibid., p. 23512.

condition question in the hands of the Secretary of Agriculture or any department or agency head other than the Secretary of Labor." [99]

As noted above, this position prevailed by a one-vote margin, and Secretary Wirtz's regulations remained in effect. In a monograph entitled "Year of Transition," summarizing the transition from the bracero program, Secretary Wirtz noted that there was an 83-percent reduction in the use of foreign farm labor in 1965 compared to 1964, although it was harder to determine the increase in the number of domestic workers employed.

A Department of Labor representative recently traced the regulations in effect as of December 1977 back to the 1965 regulations, as revised in 1967, noting that they "have changed little in the intervening decade." [1] As will be discussed below, major and very controversial revisions in these regulations were proposed in January 1977; final regulations were published March 10, 1978.

Also in 1965 the AFL–CIO urged during hearings on the far-reaching 1965 amendments to the Immigration and Nationality Act that the amendments specify that immigrants be admitted only for permanent jobs and not for jobs which were temporary or seasonal in nature.[2] Largely in response to this request, the amended definition for sixth preference immigrant status expressly restricts eligibility "to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature" (section 203(a)(6)). The AFL–CIO also requested that the following proviso be added to section 214(c):

> *Provided*, That nothing in this section shall be construed as authorizing the importation of any alien as a nonimmigrant under section 101(a)(15)(H) for the purpose of employing the alien in the production of agricultural commodities or products.[3]

The combined effect of these two amendments proposed by the AFL–CIO to the immigrant and nonimmigrant labor provisions would have been to completely shut off the Immigration and Nationality Act as a means of importing alien seasonal agricultural labor. However, the proposed amendment to section 214(c) was not accepted.

The House report on the 1965 amendments to the Immigration and Nationality Act addressed the issue of foreign agricultural workers, as follows:

> The committee has given much thought to the practice of importing foreign labor to work in agricultural endeavors. Inasmuch as the Agricultural Act of 1949, as amended, has not been extended, it is the firm position of the committee that the provisions of the Immigration and Nationality Act, pertaining to temporary admission of laborers, shall not be abused.
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> As the bill specifies, the committee has required the Attorney General to submit reports on each preference immigrant admitted to the United States for the purpose of

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[99] Ibid., p. 23529.

[1] U.S. Congress. Senate. Select Committee on Small Business. Agricultural Labor Certification Programs and Small Business. Hearings, 95th Cong., 1st sess., 1977; p. 29. (Cited as Senate Select Committee on Small Business hearings (1977).)

[2] U.S. Congress. House. Committee on the Judiciary. Immigration. Hearings, 89th Cong., 1st sess. on H.R. 2580, 1965, p. 322.

[3] Ibid., p. 323.

> undertaking gainful employment. Likewise, the committee states that the exercise of discretion by the Attorney General in the temporary labor field will be scrutinized thoroughly.
>
> The bill makes specific provision that skilled or unskilled labor of a temporary or seasonal nature is not entitled to any preference under the selective system.[4]

The Senate report on the 1965 amendments was silent on the subject of temporary agricultural labor, noting only that, "The bill specifically provides that skilled or unskilled labor of a temporary or seasonal nature is not to be entitled to any preference under the selection system for the allocation of immigrant visas." [5]

Since 1965, legislative efforts have generally been in the direction of expanding rather than restricting eligibility under the H–2 temporary worker provision, with the notable exception of legislation enacted in 1976 specifically and almost completely barring foreign medical graduates from entry under the H–2 classification.[6] Several bills introduced in the 91st Congress included amendments to the Immigration and Nationality Act deleting the requirements that the jobs for which H–1 and H–2 workers may be admitted must be themselves temporary in nature. While the amendment to the H–1 provision was retained, the amendment to the H–2 provisions was not included in the legislation enacted as Public Law 91–225.[7] This legislation also provided for the entry as H–4's of the spouses and minor children of "H" temporary workers.

An amendment providing for the temporary entry of alien workers to fill permanent jobs was contained in section 2 of H.R. 981, 93rd Congress, the Immigration and Nationality Act Amendments of 1973, which passed the House on September 26, 1973. Section 2 of the House-passed H.R. 981 read as follows:

> SEC. 2. Section 101(a)(15)(h)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii) is amended to read as follows: "(ii) who is coming temporarily to the United States for a period not in excess of one year to perform other services or labor if the Secretary of Labor has determined that there are not sufficient workers at the place to which the alien is destined to perform such services or labor who are able, willing, qualified, and available, and the employment of such aliens will not adversely affect the wages and working conditions of workers similarly employed: Provided, That the Attorney General may, in his discretion, extend the terms of such alien's admission for a period or periods not exceeding one year."

No action was taken on the legislation by the Senate Judiciary Committee, with the result that it died with the end of the 93d Congress.

Bills have been introduced in subsequent Congresses to expand the H–2 provision and/or to expedite its administration, in some cases in combination with penalties for the employment of aliens not legally

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[4] H. Rept. 745, 89th Cong., 1st sess., 1965, pp. 14–15.
[5] S. Rept. 748, 89th Cong., 1st sess., 1965, p. 16.
[6] Health Professions Educational Assistance Act of 1976, Act of October 12, 1976; Public Law 94–484; 90 Stat. 2243.
[7] Act of Apr. 7, 1970; Public Law 91–225; 84 Stat. 116.

entitled to work in the United States. This general proposal is considered below in the discussion of issues and options.

The history of the administration of the H–2 provision has been a fairly turbulent one, particularly in recent years in reaction to rising unemployment. The Labor Department has been alternatively accused of certifying too few and too many alien workers.

In 1974 the Labor Department won a case of major importance, *Elton Orchards, Inc.* v. *Brennan*.[8] Elton Orchards, a New Hampshire apple grower, challenged the validity of the Department of Labor's action in requiring it to use inexperienced Louisiana workers, while other New Hampshire apple growers were permitted to use experienced West Indian labor. The U.S. District Court in New Hampshire had found for the plaintiff, and ordered an equitable distribution of the experienced farm workers.[9] The U.S. Court of Appeals reversed this decision on December 19, 1974. Quoting from the case:

> At issue is the interstate clearance system for recruitment of agricultural workers (ICS) established by 20 C.F.R. 602.2 and 602.9, under authority of the Wagner-Peyser Act, 29 U.S.C. 49 et seq. The ICS is one element of a complex statutory structure designed to facilitate the employment of domestic workers for seasonal agricultural labor, and to permit the use of foreign nationals temporarily admitted to the United States to work for a specific employer if domestic workers are unavailable.[10]

As a Labor Department official, Mr. David Williams, subsequently noted, the court upheld "the adequacy of the system as it applies to the certification procedure for temporary foreign workers." Mr. Williams also observed that "the most significant finding by the Court states that the employers' reliance upon experienced crews of British West Indians is subordinate to Congressional policy that domestic workers rather than aliens be employed wherever possible."[11] A key passage from the decision to which he clearly refers follows:

> We recognize that appellee's business depends on the proper harvesting of its crop during the brief span of weeks when the apples are ready, and that there may be good reason for appellee's wish to be able to rely on the experienced crews of British West Indians who have performed well in the past, but here that preference collides with the mandate of a Congressional policy. To recognize a legal right to use alien workers upon a showing of business justification would be to negate the policy which permeates the immigration statutes, that domestic workers rather than aliens be employed wherever possible.[12]

A similar point was made in November 1977 by Secretary of Labor Ray Marshall, in the context of current unemployment problems rather than legislative policy:

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[8] 508 F. 2d 493 (1st Cir. 1974).
[9] *Elton Orchards, Inc.* v. *Brennan*, 382 F. Supp. 1049 (D. N.H. 1974).
[10] 508 F. 2d 493, 495 (1st Cir. 1974).
[11] U.S. Congress. House. Committee on Education and Labor. Oversight Hearings on Department of Labor Certification of the Use of Offshore Labor. 94th Cong., 1st sess., 1975, p. o. (Cited as House Education and Labor hearings (1975).)
[12] 508 F. 2d 493, 500 (1st Cir. 1974).

> One question that has been raised is whether you should import foreign workers just because they can do a better job than available domestic workers. We don't believe that is a reasonable consideration. The relevant question is whether there is an adequate available supply of domestic workers who can do the work. With American unemployment at 7.0 percent, it is unrealistic to apply intricate standards of quality in making the decision whether to import foreign workers.[13]

In March 1975 the Labor Department's certification of the use of offshore (BWI) labor was the subject of an oversight hearing by the House Subcommittee on Agricultural Labor under the chairmanship of Congressman William Ford. A major issue raised during the hearings was, quoting from Congressman Ford:

> How can you explain to me that you have British West Indians picking apples within an hour's driving distance of this capital with the kind of unemployment we have in Baltimore, Philadelphia, and Washington?
>
> Why is it cheaper to import somebody from the British West Indies and pay all of the expenses entailed than it is to recruit somebody from here or Baltimore to go out there and pick those apples? [14]

Mr. David Williams, Deputy Director of the Department of Labor's U.S. Employment Service, indicated that, despite the rising unemployment rate in the major metropolitan areas, "the certification of availability, nonavailability, of workers in areas such as Virginia, West Virginia, and Maryland, is due primarily to the test of availability of workers who are qualified, willing, and able at the time and place the work is to be performed." [15]

Several related points were made by a subsequent witness, Mr. Bert E. Perry, monitor advocate, Virginia Employment Commission, who indicated that the number of foreign workers "has been increasing primarily because of the increasing orchards that are being planted." [16] In response to questions regarding the certification of foreign workers in spite of high unemployment, Mr. Perry outlined the intra- and interstate recruitment efforts in some detail. Regarding long-distance recruitment efforts, he indicated, "the requirements for unemployment compensation don't require a person to leave his home to get a job;" local workers, however, would be disqualified from unemployment compensation if they refused a job. He also noted that raising the salary wasn't the answer to attracting local workers—the average hourly rate for apple picking in the area of Virginia under discussion was $3.94, but "there are just not too many local people left there who are not working in agriculture." [17] In general, considerable controversy and confusion have surrounded the wage issue in recent

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[13] Remarks before the Annual Meeting of the International Apple Institute, Hilton Head, South Carolina, Nov. 17, 1977. U.S. Department of Labor news, pp. 3–4.
[14] House Education and Labor hearings (1975), p. 10.
[15] Ibid.
[16] Ibid., p. 78.
[17] Ibid., p. 80.

years, both for apples (bushel versus hourly rates) [18] and for sugar cane.[19]

Mr. Perry also testified that domestic farm labor crew leaders wouldn't go to the Winchester area because "they don't like big camps. They prefer the smaller camps." [20] Earlier in the hearing, however, Congressman Ford expressed concern that farm labor contractors reportedly would not bring crews into sugar cane and, increasingly into fruit picking along the east coast, apparently because of the known preference of the employers for foreign workers.[21]

More recently, the H–2 provision and its administration have received increasing attention in the context of illegal migration. On August 4, 1977, President Jimmy Carter announced his program for the control of undocumented aliens. The major provisions in legislation (S. 2252/H.R. 9531) subsequently introduced at the request of the administration related to the permanent and temporary adjustment of status of certain aliens illegally present in the United States, and civil penalties for a pattern or practice of employment of aliens not legally authorized to work.

In apparent recognition of the likelihood that an effective curtailment of the flow of undocumented aliens would increase pressures for the legal importation of temporary foreign workers, President Carter also announced that he was requesting a comprehensive review of the temporary foreign worker (H–2) program:

> I believe it is possible to structure this program so that it responds to the legitimate needs of both employees, by protecting domestic employment opportunities, and of employers, by providing a needed workforce. However, I am not considering the reintroduction of a bracero-type program for the importation of temporary workers.[22]

The administration bill did not receive congressional action beyond hearings by the Senate Judiciary Committee during the 95th Congress. Related legislation establishing penalties for the employment of undocumented aliens introduced on the House side did not reach the hearing stage, although similar bills had passed the House in the 92d and 93d Congresses, and been reported by the House Judiciary Committee in the 94th Congress.

However, the possibility of the elimination of undocumented aliens as a fairly dependable source of labor was a matter of serious concern to some employers during this period, particularly in the area of agriculture. In mid-December 1977 the Senate Select Committee on Small Business held 2 days of hearings on agricultural labor certification programs, under the acting chairmanship of Senator Robert Packwood (R.-Oreg.). Among other issues relating to legal temporary workers, the hearings focused on the feasibility of an expanded legal temporary worker program as an alternative to illegal entrants, particularly in the context of the Labor Department's less than enthusiastic attitude toward the foreign worker program.

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[18] E.g., see U.S. Comptroller General of the United States. Letter report to Hon. James Cleveland, B–177486, Feb. 6, 1976, regarding the labor certification of foreign workers for New Hampshire's 1974 apple harvest, pp. 5–6, 10.

[19] Two Federal court of appeals cases were decided in 1976 relating to the adverse effect wage rates and prevailing wage rates for sugar cane in Florida. These were *Florida Sugar Cane League, Inc.* v. *Usery*, 531 F. 2d 299 (5th Cir. 1976); and *Williams* v. *Usery*, 531 F. 2d 305 (5th Cir. 1976).

[20] House Education and Labor hearings (1975), p. 81.

[21] Ibid., pp. 13–14.

[22] Undocumented aliens. H. Doc. 95–202, 95th Cong., 1st sess., 1977, p. 6.

Regarding the existing situation on the west coast, Senator Packwood reacted with some skepticism to the statement by William B. Lewis, Administrator of the Labor Department's U.S. Employment Service, that "We would like to emphasize that west coast fruit growers have not needed to resort to this [H–2] process in the past to meet their fruit harvest requirements."[23] Asking, "Are you saying that you have had no applications from the Northwest for the H–2 program because their employment situation is satisfactory?" Senator Packwood continued:

> I think any association would tell you that in the past on the west coast illegal aliens have been used extensively. You do not like that. I do not like that. Growers do not prefer it, they have been unable to get any other satisfactory source of help. So long as illegals were available and so long as INS was not seriously enforcing the laws, it was a practical solution to a problem that exists. That is a problem that cannot be allowed to continue.[24]

Concern was expressed about the consequences of the enactment of legislation which would make illegals unavailable. Senator Packwood explained the growers' apprehension as follows:

> * * * many of the growers today would admit that they are not looking too seriously at the documentation of the people they are hiring. They have been very satisfied with migrant workers in the past. They are good workers and a good relationship. How many of them were legal and illegal was not a question that was seriously asked.
>
> The day of the illegal alien in this country is going to dwindle very rapidly, I think, and should. You take that factor away and you are going to have, if the growers are believed, a substantial shortage. They think they are going to have a substantial shortage, and they are especially worried about trying to produce 7,000 workers in a small valley on a short-term basis * * *.[25]

Speaking on behalf of the National Council of Agricultural Employers, Mr. Perry Ellsworth, its executive vice president, stated:

> It is my association's position that as the farmworkers situation continues to worsen and if Congress passes legislation prohibiting the employment of undocumented aliens, Congress must enact legislation that will set forth inflexible rules which the Department of Labor must follow in arriving at a decision regarding the certification of small growers for the use of temporary foreign agriculture workers. Legislation has been introduced to do just that and we urge your endorsement of it."[26]

In general, the witnesses testifying at these hearings were divided between those who supported the Labor Department's fairly restrictive administration of the H–2 program, and those opposed to it. An expansion of the existing temporary worker program was strongly

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[23] Senate Select Committee on Small Business hearings (1977), p. 28.
[24] Ibid., p. 29.
[25] Ibid., p. 86.
[26] Ibid., p. 48.

opposed by representatives of the Migrant Legal Action Program, Inc. Mr. Burton Fretz argued:

> Any effort at this time to review and revise the framework for certification of foreign labor would be somewhat hazardous. It would be hazardous in terms of its likely depressing effect on the wages of domestic labor. It would be hazardous in terms of the depressing effect on any incipient collective bargaining activity that may be going on among domestic agricultural workers. Before the committee and before the Congress is persuaded that this Pandora's Box should be opened, a really tight case needs to be made. We submit that that sort of case is not yet in the record.[27]

He argued that current wages, particularly in migratory agricultural work, were not high enough to attract U.S. workers; and that the manner and timing of recruitment did not "maximize the attraction of domestic labor." He also criticized current State work disincentives built into the welfare law, particularly in California where a head of a household with children is disqualified from receiving aid if he works more than 100 hours in a month.[28]

Mr. C. H. Fields, the assistant director of the American Farm Bureau Federation, summed up what he saw to be the incorrect assumptions on which the current restrictive attitude of the Labor Department was based, as follows:

> 1. If growers would pay high enough wages and provide improved working conditions, there would be plenty of domestic workers available to meet all of the seasonal needs in agriculture.
>
> 2. Growers prefer to hire foreign workers because they are more tractable, more appreciative of a lower wage, and less likely to be interested in forming or joining labor unions.
>
> 3. A considerable portion of the millions of people on welfare or on unemployment compensation could and would perform work on farms if growers would pay them enough, provide transportation, or make any real effort to recruit such people.[29]

He continued:

> These assumptions do not contribute to getting crops harvested when they are ready and must be harvested. It is time for the Department, the Congress, and the public to realize that the production of certain crops in certain areas and under certain conditions requires the importation of some foreign workers on a temporary basis.[30]

In January 1977, the Department of Labor had proposed an extensive revision in the regulations governing the temporary employment of alien agricultural and logging workers in the United States.[31] The proposed regulations were generally more restrictive and proved to be highly controversial. The Labor Department reported that approximately 170 individuals and organizations testified at the

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[27] Ibid., p. 85.
[28] Ibid., pp. 86–87.
[29] Ibid., p. 98.
[30] Ibid.
[31] 42 F.R. 4670–4673 (Jan. 25, 1977).

public hearings held on the proposed regulations and/or submitted written statements. Most of the response was negative, and the final regulations differed in significant respects from the proposed ones.

The voluminous material received by the Department in response to the proposed regulations was analyzed by a consulting firm under contract to the Labor Department. Several recurring themes identified in this analysis are of general interest. The first of these was the relation perceived between illegal entrants and legal temporary workers. It was noted that:

> Many agricultural employers, particularly those in the western states, apparently are looking toward the alien certification process as a future alternative to present use of illegals in the event that employers are made legally responsible for hiring illegals, or as they put it, if the supply of illegals is cut off. Pointing to the decline of the seasonal agricultural labor force, they are concerned that any tightening up of the alien certification process may pose future problems.[32]

It was suggested that growers "would turn to illegals if the certification process were eliminated or phased out." The issue was seen as being "particularly significant for the east coast apple growers who must compete for the apple market with west coast growers." Quoting further:

> Apparently it is common knowledge that the west coast growers are using a substantial proportion of illegal aliens to pick their crop. As the flow of illegals from the Caribbean countries to eastern states increases and as the certification process is tightened up, it can be expected that the growing pool of illegal labor will become an increasingly attractive source for east coast apple growers.[33]

The second point of general interest was the recurrent criticism of the U.S. Employment Service (ES), particularly in the agricultural labor market, which came "from all sides—from growers, workers, academics, and government officials, even including representatives of the ES itself." [34] One criticism of particular interest related to "the conflict of ES objectives on the one hand, encouraging the elimination of migrancy, with ES local offices getting more credit for placement of migrants into permanent higher paying jobs which almost by definition are apt to be non-agricultural jobs, and the goal of improved service to employers—presumably agricultural employers." [35]

In other comments, the conditions imposed by the U.S. Employment Service interstate clearance system were said to be too difficult to comply with, and both growers and farmworkers expressed the opinion that it had broken down. In general, criticism focused on the alleged inability of U.S. Employment Service to provide services to either growers or farmworkers. "Testimony from these sources showed an underlying lack of trust—a lack of assurance that ES was committed to resolving the problems." [36]

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[32] Ruttenberg, Friedman, Kilgallon, Gutchess and Assoc., Inc. Letter report to Mr. Harold Kuptzin, Department of Labor, Sept. 19, 1977, part II, p. 4.
[33] Ibid., part V, p. 3.
[34] Ibid., part V, p. 1.
[35] Ibid., part V, p. 2.
[36] Ibid.

On March 10, 1978, the Employment and Training Administration of the U.S. Department of Labor published final revised regulations for the labor certification of alien agricultural and logging workers in the United States.[37] According to the Labor Department, "it is the purpose of these [final] rules to more clearly define the roles of the Department, State employment service agencies, and employers in the temporary labor certification process." [38] This purpose underlies both the extensive reorganization of the regulations, as well as their increase in length.

The effort to more clearly define the roles of the Labor Department and other participants in the temporary alien labor certification process is directed, first, at clarifying the nature of and statutory basis for the Labor Department's responsibilities. Second, and more significantly, the procedures to be followed by both the Labor Department and employers seeking temporary alien workers are specified in considerably more detail than in the past. This is probably the single most important difference between the revised and prior regulations. It appears to be a response to criticism received during the lengthy consideration during 1977 of the proposed regulations, and possibly, to bills introduced in both the 94th and 95th Congresses to legislatively mandate a more orderly H–2 certification process.

The administration of the H–2 provision, including a brief discussion of the relevant regulations issued by both the Justice and Labor Departments, is considered below.

b. Overview of H–2 operations

H–2 temporary workers are as closely linked to their employers as were braceros. They are petitioned for by their prospective employers; approval of the petition is automatically terminated in the event that the employer dies, goes out of business, or files a written withdrawal of the petition before the beneficiary arrives in the United States; [39] and in the event that an alien wishes to change employers, a new petition must be submitted by the prospective new employer.[40]

The admission process is initiated by the employer, who files a petition with the Attorney General, usually as represented by the INS district director who has jurisdiction over the area where the services are to be performed. The law requires approval by the Attorney General, after consultation with the appropriate agencies, which in practice has been limited to the Labor Department and takes the form of labor certification. Regulations issued by INS require that, "either a certification from the Secretary of Labor or his designated representative stating that qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect the wages and working condition of workers in the United States similarly employed, or a notice that such a certification cannot be made, shall be attached to every nonimmigrant visa petition to accord an alien a classification under section 101(a) (15) (H) (ii) of the Act." [41]

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[37] 43 F.R. 10306 (Mar. 10, 1977).
[38] Ibid.
[39] 8 CFR 214.2(h)(8) (Jan. 1, 1979).
[40] 8 CFR 214.2(h)(1) (Jan. 1, 1979).
[41] 8 CFR 214.2(h)(3) (Jan. 1, 1979).

The Department of Labor's Employment and Training Administration, in turn, has issued regulations governing the labor certification process.[42] The H–2 petitioning employer is required to file an application for labor certification with the local office of the State Employment Service, which reports its findings to the regional office of the U.S. Department of Labor's Employment and Training Administration (ETA). The final decision on certification is made by the ETA.

Detailed requirements are set forth in the regulations pertaining to the labor certification process for temporary agricultural and logging employment.[43] The application for certification submitted to the local office of the State Employment Service is required to include a job offer for U.S. workers and to meet specified standards regarding wages, working conditions, housing, transportation, and workers' rights and benefits. Quoting from the preamble to the regulations, "In short, the regulations provide, with respect not only to transportation and subsistence costs but also with respect to all wages, benefits, and working conditions, that employers must offer and provide U.S. workers with at least the same level of wages, benefits and working conditions offered or provided to foreign workers." [44]

Adverse effect rates for agricultural and logging employment in certain States are published annually by the Labor Department, most recently on June 5, 1979.[45] "Adverse effect rates" are defined in the regulations as the—

> wage rate which the Administrator has determined must be offered and paid to foreign and U.S. workers for a particular occupation and/or area so that the wages of similarly employed U.S. workers will not be adversely affected. The Administrator may determine that the prevailing wage rate in the area and/or occupation is the adverse effect rate, if the use (or non-use) of aliens has not depressed the wages of similarly employed U.S. workers. The Administrator may determine that a wage rate higher than the prevailing wage rate is the adverse effect rate if the Administrator determines that the use of aliens has depressed the wages of similarly employed U.S. workers.[46]

Adverse effect wage rates for agricultural employment were published for 11 eastern seaboard States in 1979, reflecting the past distribution of H–2 agricultural workers. In addition, adverse effect wage rates were published for Arizona, Colorado, and Texas in 1979.[47]

The regulations governing the admission of H–2 agricultural workers may be interpreted as a belated battle won by those who argued during the bracero years, first, that domestic workers should be guaranteed the same benefits as those guaranteed the Mexican foreign workers by the international treaties and individual contracts; and, second,

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[42] 20 CFR 621, Certification of temporary foreign labor for occupations other than agriculture and logging; 20 CFR 655, Labor certification process for the temporary employment of aliens in the United States (Apr. 1, 1979).
[43] 20 CFR 655.200 (Apr. 1, 1979).
[44] 43 F.R. 10308 (Mar. 10, 1979).
[45] 44 F.R. 32306–7 (June 5, 1979).
[46] 20 CFR 655.200(b) (Apr. 1, 1979).
[47] 44 F.R. 59891 (Oct. 16, 1979).

that the requirement that foreign workers be paid the prevailing wage provided no protection to domestic workers in areas and occupations so dominated by foreign workers that their wage became the prevailing wage. As such, the regulations derive directly from those issued by Secretary of Labor Wirtz in December 1964 which were specifically intended not only to prevent the resurfacing of the bracero program under the authority of Public Law 414, but also to decrease and perhaps end the dependence of U.S. employers on foreign labor, in part by raising the cost of using them. On the other hand, it should be noted that employers of H–2 agricultural workers are exempted from paying social security and unemployment taxes, which lowers the cost of their employment compared to domestic workers.

Petitions for the issuance of H–2 nonimmigrant visas and the accompanying labor certification are filed with INS. Although the role of the Labor Department is advisory, and the Attorney General is required by law to make the final determination, INS "will in most cases abide by the decision of the Labor Department." [48]

In the event that the petition is granted, it is transmitted to the consul for the issuance of a visa. If a time period is specified in the labor certification, the validity of the visa petition cannot exceed that time period. In the event that no time period is specified, the visa petition is valid for 1 year from the date of the labor certification.[49] Extensions may be requested in increments of 1 year each, not exceeding 3 years of uninterrupted stay. Each request for an extension must be accompanied by a labor certification.[50]

c. Special H–2 programs

A number of individual programs with more or less special procedures and, in some cases, problems, operate under the authority of the H–2 provision. The most significant of these in terms of numbers is the so-called BWI program.[51] "BWI" refers to the British West Indies, although by now some of the participating islands, notably Jamaica, have become independent. Controls on the BWI workers are administered by the INS office in West Palm Beach, Fla.[52]

Like the Mexican bracero program, the BWI program originated in response to the labor shortage resulting from World War II. Then as now, the BWI workers were primarily employed on the east coast, where they had certain advantages over the Mexicans as a supplementary labor force. Most spoke English, and Spanish was far less widely spoken in the East than it was in the Southwest. They also had the advantage of proximity, being closer to the eastern seaboard than Mexico. The manpower shortage resulting from the transfer of much of the domestic work force to the military and to defense industries had been exacerbated by the gasoline and tire shortages, which curtailed the travel of foreign as well as domestic workers. Finally, quoting from Rasmussen, "even if the barriers of transportation and language had not existed there still was the fact that Mexico

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[48] Gordon, Charles, and Rosenfield, Harry N. Immigration Law and Procedure, rev. ed., v. 1. New York, Matthew Bender. 1979, p. 2–114.
[49] 8 CFR 214.2(h)(7) (Jan. 1, 1979).
[50] 8 CFR 214.2(h)(11) (Jan. 1, 1979).
[51] See U.S. Congress. Senate. Committee on the Judiciary. The West Indies (BWI) Alien Labor Program: 1943–77. 95th Cong., 2d sess. [Committee print], 1978.
[52] INS Operating Instructions 214.2(h)(2)(v).

limited the number of workers that could be made available and there were too few to meet the demands of the Southwest." [53]

The governments of the offshore islands from which the BWI workers come have traditionally taken an active interest in the program since its inception during World War II. Currently, the islands involved in the program include Jamaica, St. Lucia, St. Vincent, Dominica, and Barbados. While there are no longer government-to-government agreements, as there were during the war, the BWI program operates under a tripartite agreement among the U.S. employer or, as is more frequently the case, employer association, the worker's government, and the worker.

The British West Indies Central Labour Organisation (BWICLO) represents the governments of the participating islands, serving a liaison function and generally attending to the problems of the workers, auditing employer payrolls, and negotiating with employers regarding the terms and conditions of the workers' service. The main office of the BWICLO is in Washington, headed by Mr. Harold F. Edwards. There are also offices in the sugar cane area in Florida, and temporary offices in other areas as needed. Like other H–2 agricultural workers, BWI workers are exempt from social security payments, as are their employers. BWI workers are subject to the U.S. income tax.

Over the years, the BWI workers have worked in a wide variety of areas and crops, including shade tobacco in Connecticut, truck farming in New Jersey, cherry picking in Wisconsin, sweet corn in Idaho, tomatoes in Indiana, asparagus in Illinois, and peas in California—to give a partial list. A number of these crops have since been mechanized and/or the BWI workers have been replaced by domestic workers. In 1979 they were employed in sugar cane in Florida, and apple picking up the east coast. Despite the reduction in the crops and areas, the number of BWI workers admitted annually has been in the general vicinity of 12,000 since 1960, ranging from 9,000 to 15,000. Since the termination of the Mexican bracero program in 1964, BWI workers have regularly accounted for the largest single group of temporary agricultural workers.

The employment of Canadian woodsmen [54] in Maine during the summer months dates back to an agreement signed by the Joint Economic Committees of Canada and the United States in February 1942. After the enactment of the 1952 legislation, the cross-border movement of Canadian woodsmen continued under the authority of that legislation, pursuant to the specific requirements of the H–2 provision. During the past decade, a sharp increase in the hourly wage rate has been accompanied by a decline in the number of bonded H–2 Canadian woodsmen from more than 6,000 to less than 1,000, "and the principal locations where the foreign workers are numerically significant are those camps that are more accessible from Canada than from the interior of Maine." [55] However, while the number of H–2's has been declining, the number of Canadian commuter aliens working in the Maine woods has increased. Commuter aliens are aliens admitted as permanent residents, or immigrants,

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[53] Rasmussen (1951), p. 233.
[54] See U.S. Congress. Senate. Committee on Human Resources. Canadian Labor in the Maine Woods, 1977. Hearings, 95th Cong., 1st sess., 1977.
[55] North and LeBel (1978), p. 177.

who choose to reside in Canada or Mexico and commute to the United States for permanent or seasonal employment (see "Commuter Aliens," p. 82).

Both Guam and the Virgin Islands of the United States have had extensive experience with the use of H–2 workers which in both cases has resulted in problems that remain unsolved today. In Guam,[56] the construction industry is heavily dominated by H–2 workers, who accounted for 82 percent of the construction labor force in 1975. The U.S. Labor Department has been attempting to correct this situation through the use of a graduated adverse effect wage increase for the industry.[57]

The use of Filipinos in the construction industry in Guam dates back to the period following World War II and has continued through the widescale repairs necessitated by a series of devastating typhoons in the 1960's and 1970's. The alien construction workers have alternated in status between that of H–2 workers following the enactment of the Immigration and Nationality Act through the 1950's, as parolees admitted under section 212(d)(5) from 1960 through the mid-1970's, and again as H–2's in the 1970's. The situation in Guam represents a classic case of the difficulty of reversing the domination of an industry by temporary alien workers. However, the economic and social differences between Guam and the U.S. mainland are such that caution should be used in generalizing from the experience with regards to its implications for an expanded temporary worker program.

The same is true regarding the situation in the Virgin Islands of the United States,[58] where a sizable number of H–2 workers have indefinite labor certification and for some time have been employed—and, in some cases, unemployed—in occupations which would generally be considered permanent rather than temporary in nature. Many of these aliens, who are primarily from the nearby British Virgin Islands, have been there since the mid-1950's and before. They were first admitted legally pursuant to a recommendation in 1955 by the House Judiciary Committee that natives of Tortola be admitted under the authority of the H–2 provision for temporary seasonal employment in agriculture and the tourist industry.[59] This recommendation is commonly cited as the basis for the nonimmigrant alien labor program in the U.S. Virgin Islands, which was expanded considerably in its administration by the local Virgin Islands government and by the U.S. Departments of Justice and Labor. In May 1970 many of the H–2 aliens were issued indefinite labor certifications because, as a Labor Department witness testified in 1976, "the Department realized that a precipitous revocation of the status of these aliens and their deportation might have had disastrous consequences for the economy of the Virgin Islands." [60]

The nonimmigrant alien population and their dependents on the U.S. Virgin Islands are estimated at more than 20,000, which is significant when compared to the total U.S. Virgin Islands population of approximately 95,000, and even more significant as a percentage

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[56] See U.S. Congress. House. Committee on the Judiciary. The Use of Temporary Alien Labor on Guam. 95th Cong., 2d sess. Committee Print No. 24, 1979.

[57] 42 F.R. 45902 (Sept. 13, 1977).

[58] See U.S. Congress. House. Committee on the Judiciary. Nonimmigrant Alien Labor Program on the Virgin Islands of the United States. 94th Cong., 1st sess., committee print, 1975.

[59] H. Rept. 1570, 84th Cong., 1st sess., 1955, p. 131.

[60] U.S. Congress. House. Committee on the Judiciary. Alien Labor Problems in the U.S. Virgin Islands. Hearings on H.R. 11261, 94th Cong., 2d sess., 1976, pp. 41–42.

of the labor force. Their importance to the economy of the Islands, particularly during the 1960's was the principal reason why the nonimmigrant alien worker problem developed as it did.

The proposed legislative solution favored by the Ford administration to this problem of temporary alien workers who have, in fact, become permanent was the establishment of a special program which would have allowed for the adjustment of status of eligible H–2 nonimmigrants on the U.S. Virgin Islands to that of permanent resident aliens, outside the normal numerical limits.[61] Another legislative approach, favored by the government of the U.S. Virgin Islands, was the establishment of a special Commission to conduct a case-by-case review of the applications for adjustment, based on special criteria itemized in the legislation.[62] However, no action was taken in the 94th Congress or subsequently.

At the time the legislation was considered, during an economic downturn on the Islands, concern was expressed that the blanketing in of the indefinitely certified workers and their dependents as part of the permanent labor force would exacerbate the Islands' unemployment and other economic problems. There was also concern about the potential impact on government service and benefit programs, to which the nonimmigrant workers and their families now have only limited access because of their nonimmigrant status. Two other areas of concern on the part of the citizens and permanent resident aliens in the U.S. Virgin Islands are the general desirability of some of the nonimmigrant workers as part of the Islands' permanent population; and the eventual potential political impact of the aliens who convert to permanent resident status, assuming that they choose to remain on the Islands and become naturalized citizens after the necessary residency period.

2. OTHER EMPLOYABLE NONIMMIGRANTS

The "H" nonimmigrant classification is the principal category reserved for aliens entering for the purpose of temporary employment. However, temporary employment is a primary or secondary feature of most of the 12 nonimmigrant classifications,[63] although for narrowly prescribed purposes, periods of time, et cetera, depending on the classification. The work-related nonimmigrant classifications other than "H" are mentioned here only in passing because of their limited relevance to the subject of a temporary alien worker program, either in terms of past experience or potential for future expansion.

The "J" exchange visitor and "L" intracompany transferee categories are included with "H" temporary worker nonimmigrants in the INS chart setting forth the occupations of temporary workers in fiscal year 1977 (see table 5). While "J" exchange visitor entries outnumbered both the "H" and "L" entries, it will be noted that 34,978 of the 50,507 "J" entries were students. The use of the "J" exchange visitor category for U.S. hospital staffing purposes was a matter of considerable concern in the mid-1970's and resulted in remedial legislation in 1976 and further technical amendments in 1977.[64] The entry

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[61] H.R. 10323, section 11, 94th Cong.
[62] H.R. 11261, 94th Cong.
[63] Immigration and Nationality Act, section 101(a)(15)(A)–(L); 8 U.S.C. 1101(a)(15)(A)–(L).
[64] Health Professions Educational Assistance Act of 1976, Public Law 94–484 (90 Stat. 2243), as amended by the Public Health Service Act amendments of 1977; Public Law 95–83 (91 Stat. 383). For a discussion, see U.S. Congress. House. Committee on Interstate and Foreign Commerce. Current Health Manpower Issues. Committee Print No. 96–IFC–34, 96th Cong., 1st sess., 1979; pp. 59–78.

of foreign medical graduates under the "H" classification was also limited by the 1976 legislation.

TABLE 5.—TEMPORARY WORKERS ADMITTED UNDER SEC. 101(a)(15)(H), (J), AND (L), IMMIGRATION AND NATIONALITY ACT, BY OCCUPATION, YEAR ENDED SEPT. 30, 1977

Occupation	Total	Workers of distinguished merit and ability (H-1)	Other temporary workers (H-2)	Industrial trainees (H-3)	Exchange visitors (J)	Intracompany transferees (L)
All occupations	114,855	15,702	27,760	3,213	50,507	17,673
Professional, technical and kindred workers	42,472	15,048	7,842	2,611	13,794	3,177
Managers and administrators, except farm	16,300	631	299	384	1,004	13,982
Sales workers	557	15	174	42	89	237
Clerical and kindred workers	518	3	194	34	203	84
Craftsmen and kindred workers	3,584	2	3,330	44	116	92
Operatives, except transport	734	----	603	36	41	54
Transport equipment operatives	155	----	147	----	5	3
Laborers, except farm	2,046	----	1,990	26	27	3
Farmers and farm managers	41	2	----	5	32	2
Farm laborers and farm foremen	11,768	----	11,655	13	100	----
Service workers except private household	1,100	1	928	18	114	39
Private household workers	602	----	598	----	4	----
Students	34,978	----	----	----	34,978	----

Source: U.S. Department of Justice. Immigration and Naturalization Service. 1977 Annual Report of the Immigration and Naturalization Service. Washington, U.S. Government Printing Office [1979], pp. 74–78.

Other work-related nonimmigrant classifications are "A" foreign government officials, "B–1" visitors for business, "D" crewman, "E" treaty traders, "G" international organization aliens, and "I" information media representatives. "F" students are allowed to accept part-time employment in certain circumstances, but this is secondary to the principal purpose of their entry. Employment is strictly prohibited for "B–2" tourists, the nonimmigrant classification which accounts for by far the largest number of nonimmigrant entries. In fiscal year 1977, 5,697,318 of the 8,036,916 nonimmigrants admitted were B–2 visitors for pleasure, or tourists.

3. COMMUTER ALIENS

One final category of aliens entering under the Immigration and Nationality Act is relevant to a discussion of U.S. experience with temporary alien labor. Commuter aliens, or "green card commuters," are aliens who have been admitted as immigrants, for permanent residence, and who live in either Canada or Mexico and commute to the United States for daily or seasonal employment. The number of commuters was reported at the end of fiscal year 1978 at 57,268, of whom 49,290 commuted across the Mexican border.

The card used by the commuter to enable him to pass freely across the U.S. border as an immigrant legally entitled to work in this country is no longer the green special border crossing identification card once used (hence the colloquial name "green carder"), but the Alien Registration Receipt Card (Form I–151 or I–551) issued to registered immigrants. Under present law and regulations, this card entitles any alien admitted for permanent residence the right to reenter the country following a temporary absence of less than a year.

The significance of the commuter status is that the alien must meet the conditions for entry into the United States, particularly that of labor certification, only at the time of his first admission; thereafter, he is considered as returning to his residence in the United States. Commuter status for alien employment purposes is dependent on the alien's having a permanent and stable job in this country when he is first admitted; and, in the event that he loses that job subsequent to obtaining commuter status, on his not remaining unemployed for a period exceeding 6 months.[65]

The legality of the commuter status has been challenged in the courts and upheld by the U.S. Supreme Court in *Saxbe* v. *Bustos*, 419 U.S. 65 (1974). Prior to that time, there was considerable debate for and against continuance of the commuter program particularly, although not exclusively, with reference to the Mexican border. Some of the arguments against the continued use of commuters closely resembled those heard during the bracero era and, more recently, regarding the use of H–2 workers in agriculture. For instance, it was argued that the ready availability of a sizable and inexpensive labor force was a major factor behind the comparatively lower wages and higher unemployment rates prevalent in the border areas of California, Texas, and Arizona.[66]

The commuter system differs in significant respects from the bracero and H–2 programs. The workers are not specifically tied to individual employers; they are not limited to agriculture or any other specific employment; they are not limited to occupations and areas where there is a labor shortage except by the availability of employment; and they are subject to all of the labor laws which apply to U.S. citizens and permanent resident aliens. In short, with the exception of the fact that they are tied to a rather limited geographic region by virtue of the fact that they commute across the Mexican or Canadian border, they are subject only to the fairly minimal restraints on immigrants in the U.S. labor market. These consist primarily of State licensing requirements for certain occupations and the prohibition against Federal employment.

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[65] 8 CFR 211.5 (Jan. 1, 1979).

[66] See Ericson, Anna-Stina. The Impact of Commuters on the Mexican-American Border Area. Monthly Labor Review, August 1970; pp. 18–27; North, David S., and Marion Houstoun. Appendix A, Green-Card Commuters, in the Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study. Washington, Linton & Co., March 1976. [Prepared under contract to the U.S. Department of Labor.]

II. EUROPEAN "GUESTWORKER" PROGRAMS

The purpose of this chapter is to examine the experience of Western Europe with temporary foreign labor ("guestworker") programs. It has been estimated that at least 15 million workers and their dependents from the developing countries of Southern Europe, Iberia, and North Africa migrated legally to the industrialized regions of Northern and Western Europe between 1960 and 1975. No other part of the world has experienced such a large-scale, legal movement of temporary workers.

The term "guestworker" is a literal translation of the German word Gastarbeiter. The use of the term emphasizes the idea that foreign workers are temporary "guests" in the host country and are not expected to remain beyond a limited period of time during which there is need for their services. Although different terminology is used in other countries, the term "guestworker" is used here to refer to all the temporary worker programs of Europe.

This chapter is divided into three sections. The first examines the formation and development of European guestworker programs from their inception in the 1950's to their discontinuance in 1973–74 and subsequent events. The experiences of four individual countries—Switzerland, Germany, France, and Sweden—are examined in the second section. The examination reveals that although each of the countries initially took a different approach in their guestworker policies, in the 1970's their policies have converged. The third section examines the consequences of European labor migration. It is generally agreed that the availability of a foreign manpower supply was a critical factor in Europe's post-World War II economic growth, but unforeseen social and political consequences have led to questions about the overall benefits of guestworker programs.

A. Background and Overview

The large-scale migration of foreign workers to Western and Northern Europe for more than two decades following World War II was engendered by chronic labor shortages in Europe's industrialized countries and massive unemployment in less developed countries. War casualities, a decrease in birth rates, and postwar emigration left Europe's industrialized nations with an inadequate supply of native manpower to facilitate economic recovery and growth. At the same time, the countries of Southern Europe, Iberia, and North Africa were experiencing high population growth rates, widespread unemployment, and slow economic growth.

During the years immediately following the war, the resettlement of displaced persons and the transfer of labor from agricultural to urban areas satisfied labor shortages. But as the economies of the industrially advanced nations recovered and expanded at rapid rates, these sources became inadequate. Small scale recruitment of foreign labor began

as early as the 1940's and continued through the 1950's, but in the 1960's the movement exploded. By the end of the decade some 800,000 workers were emigrating annually to Europe's industrial regions.[1] West European countries started their recruitment of foreigners with the intention of filling labor market gaps with temporary workers who would stay only a few years, who would not require any significant amount of social services, and who would return home when the labor shortage had disappeared. With a few notable exceptions, such as France and Sweden, neither family reunion nor permanent settlement was envisaged.

The Federal Republic of Germany and France were by far the largest recruiters in terms of numbers, between them taking in about 70 percent of all guestworkers. However, in terms of proportion of the total labor force, Luxembourg and Switzerland were the greatest recruiters. In 1974, 30 percent of Luxembourg's labor force and 24 percent of Switzerland's was foreign, whereas all other countries remained below the 10-percent level (see table 6). The major sending countries included the Mediterranean basin countries of Greece, Italy, Portugal, Spain, and Turkey; Finland; Yugoslavia; and the North African countries of Algeria, Morocco, and Tunisia (see table 7).

TABLE 6.—FOREIGN WORKING POPULATION AND PERCENT OF TOTAL WORKING POPULATION, 1974

Country	Foreign working population	Percent of total working population
Austria	219,000	6.5
Belgium	258,000	6.8
France	1,955,000	8.6
Germany	2,350,000	8.8
Luxembourg	45,000	30.0
Netherlands	214,000	4.2
Sweden	221,000	6.1
Switzerland	710,000	24.1

Source: General Survey of Main Present-day International Migration for Employment. International Labour Organization 1975: pp. 23–24.

TABLE 7.—ESTIMATED FOREIGN WORKERS IN EUROPE BY COUNTRIES OF ORIGIN AND DESTINATION, 1975

Country of destination/origin	Austria	Belgium	France	Germany	Luxembourg	Netherlands	Sweden	Switzerland	Total
Algeria		3,000	420,000	2,000			200		425,200
Austria				78,000				21,000	99,000
Finland							103,000		103,000
Greece		8,000	5,000	212,000		2,000	8,000		235,000
Italy	2,000	85,000	210,000	318,000	10,700	10,000	2,500	281,000	919,200
Morocco		60,000	165,000	18,000		28,000	500		271,500
Portugal		3,000	430,000	70,000	12,500	5,000	1,000	4,000	525,500
Spain		30,000	250,000	132,000	1,900	18,000	2,000	72,000	505,900
Tunisia			90,000	15,000		1,000	200		106,200
Turkey	26,000	10,000	35,000	582,000		38,000	4,000	16,000	711,200
Yugoslavia	136,000	3,000	60,000	436,000	600	10,000	23,000	24,000	692,600
Other	21,000	76,000	235,000	328,000	21,100	104,000	60,000	135,000	980,100
Total	185,200	278,000	1,900,000	2,191,000	46,800	216,000	204,400	553,000	5,574,400

Source: Organization for Economic Cooperation and Development. SOPEMI Report (1976).

Mention should be made of two important developments relating to migration trends within Europe which occurred during the period under discussion. The first was the establishment in 1954 of the Nordic

[1] Organization for Economic Cooperation and Development. The Migratory Chain. Paris, 1978, p. 8.

Common Labor Market by Norway, Sweden, Denmark, Finland, and Iceland. The second was the establishment in 1968 in the Treaty of Rome (articles 48 and 49) of the principle of the free movement of labor within the European Economic Community. Both agreements allow workers from any of the signatory countries to travel freely to seek and accept employment within the common labor market. It is generally believed that these agreements have not increased the number of workers from other member countries in the leading countries of immigration, and that where migration has taken place—for example, from Italy and Finland—it would have occurred anyway.[2]

European labor migration reached its peak in 1970 at which point it began to slacken somewhat due to more restrictive immigration procedures introduced by some receiving countries. Restrictions were imposed because of perceived rising social costs resulting from the presence of large numbers of foreign workers (see section C for further discussion). Nevertheless, in 1973 some 500,000 foreign workers migrated to Northwest Europe, close to 6 million were legally employed, and the total foreign population exceeded 10 million. These figures exclude illegal immigrants who have been estimated at 10 percent of the officially registered foreigners.[3] The years 1973–74 marked the real turning point in European labor migration policy. Following the 1973 oil crisis and ensuing international recession, all major receiving countries moved to halt, or to severely curtail, further recruitment of alien manpower. Measures to encourage aliens voluntarily to return to their home countries were adopted. By 1976 the immigration of workers had come nearly to a standstill.[4]

It had been anticipated that a recession would cause massive returns of migrants to their homelands, but this did not occur with the recession which began in 1974. In fact, it is possible that fewer migrants than usual returned home because the new restrictions would prevent their return at a later date.[5] Despite the ban on new immigration, the number of foreign workers decreased by only about 1.2 million—from 6,084,000 to 4,914,000—between 1973 and 1977 (see table 8). No

TABLE 8.—ESTIMATED NUMBER OF FOREIGN WORKERS: 1964, 1973, 1977

Country	1964	1973	1977
Austria	40,000	248,000	189,000
Belgium	226,000	265,000	370,000
France	1,200,000	1,930,000	1,584,000
Germany	912,000	2,595,000	1,889,000
Luxembourg	25,000	43,000	49,000
Netherlands	61,000	160,000	115,000
Sweden	162,000	222,000	225,000
Switzerland	782,000	621,000	493,000
Total	3,435,000	6,084,000	4,914,000

Sources: George Hoffman. A Geography of Europe, 4th ed. New York, Ronald Press, 1977, p. 90; Philip L. Martin. Guestworker Programs—Lessons from Europe, Washington, D.C., Brookings Institution, 1979, p. 21.

[2] Salt, John, and Hugh Clout. Migrations in Post-War Europe. London, Oxford University Press, 1976, p. 82; United Nations. Labour Supply and Migration in Europe: Demographic Dimensions 1950–1975 and Prospects. New York, 1979, pp. 77, 129.

[3] Werner, Heinz. Some Current Topics of Labour Migration in Europe. International Migration, v. 12, 1974, p. 300.

[4] United Nations. Labour Supply and Migration in Europe: Demographic Dimensions 1950–1975 and Prospects, p. 77.

[5] Ibid.

country has attempted massive expulsions of guestworkers, both because there is still a need for them in certain segments of the economy, and because of sensitivity to human rights issues. Most have opted to stabilize their current guestworker populations by (1) severely restricting the further admission of workers and encouraging the repatriation of unemployed foreign workers, and (2) reuniting the families and improving the status of those who wish to remain permanently in the country.[6] As as result, while the foreign workforce has shown some decrease in size, the total foreign population has actually increased (see table 9). The explanation for this seeming paradox is

TABLE 9.—TOTAL FOREIGN POPULATION AND FOREIGN WORKING POPULATION: 1973, 1975, 1977

	1973		1975		1977	
	Total foreign population	Foreign working population	Total foreign population	Foreign working population	Total foreign population	Foreign working population
Belgium	774, 800	265, 000	835, 400	278, 000	869, 700	370, 000
France	3, 873, 100	1, 930, 000	4, 106, 000	1, 900, 000	4, 237, 000	1, 584, 000
Germany	3, 966, 200	2, 595, 000	4, 089, 600	2, 191, 000	3, 948, 300	1, 889, 000
Netherlands	282, 500	160, 000	344, 900	216, 000	[1] 362, 500	115, 000
Sweden	397, 500	222, 000	409, 900	204, 400	424, 000	225, 000
Switzerland	1, 052, 500	621, 000	1, 012, 700	553, 000	932, 700	493, 000
Total	10, 346, 600	5, 793, 000	10, 798, 500	5, 342, 400	10, 774, 200	4, 676, 000

[1] 1976.

Sources: Organization for Economic Cooperation and Development. SOPEMI Report (1976, 1978); Philip L. Martin-Guestworker Programs—Lessons from Europe. Washington, D.C., Brookings Institution, 1979, p. 21; George Hoffman. A Geography of Europe, 4th ed. New York, Ronald Press, 1977, p. 90.

that family unification and births in guestworker families have compensated for the decline in gainfully employed foreigners. It would appear that a significant number of guestworkers—up to half in some countries [7]—have become permanent rather than temporary residents.

B. Experiences of Individual Countries

The following discussion of the guestworker programs of four individual countries seeks to emphasize those aspects of each country's policy or experiences that are in some way unique. Switzerland was among the earliest large-scale labor importers, and it built up the densest concentration of foreign workers among the major European countries. Pressures for the curtailment of labor immigration began as early as 1963 there, apparently more for political than economic reasons. Switzerland's policy was never to promote the permanent settlement of immigrants. France and West Germany recruited by far the largest volume of workers. However, these two countries took very different approaches to migration. From the beginning Germany tightly regulated recruitment through formal government channels; labor migration to France was to a great extent "spontaneous," that is, aliens who had entered the country illegally had their status regularized after finding employment. Like Switzerland, Germany never considered itself a country of permanent immigration, whereas permanent migration to France was encouraged, at least in the beginning. Sweden also officially recognized that a substantial part of its

[6] Ibid.
[7] Martin, Philip L. Guestworker Programs—Lessons from Europe. Washington, D.C., Brookings Institution, 1979, p. 59.

migrants would become permanent residents. More than any other country in Europe it has undertaken to promote the integration and equality of its immigrant population. Although these four countries represent four different approaches to labor immigration, in the 1970's all have adopted policies with the same general characteristics: restrictions on the further admission of migrant workers and stabilization of the existing foreign population.

Switzerland.—A neutral during World War II, Switzerland emerged after the war with its economy undamaged. To meet the postwar demands for its goods and services, it entered into agreements with neighboring countries for the immigration of workers as early as 1945 and received the first 50,000 of them in 1946. Thereafter Switzerland's reliance on foreign labor increased rapidly. In the peak year of 1964 there were more than 700,000 guestworkers in the country. The proportion of aliens in the work force increased from 10 percent in 1952 to more than 30 percent in 1963.

During the early years of labor recruitment, the Government adopted a "hands off" approach. Employers generally were allowed to contract directly with foreign workers who then were granted work and residency permits almost automatically so long as no Swiss laborers were available. During the early 1960's, however, public concern began to mount that an excessively large alien population constituted a threat to the Swiss national identity. Beginning in 1963 the Government officially ended its "hands off" policy and undertook to stabilize and eventually reduce the foreign population. Its first attempt to discourage the further recruitment of guestworkers was to place a freeze on overall manpower levels for individual firms. This measure failed because guestworkers were increasingly able to find jobs which had been abandoned by indigenous workers.[8] In 1965 a popular movement was launched for a national referendum to amend the constitution to limit the number of foreign residents in Switzerland to 10 percent of the total population. This movement subsided when the Government decreed a 5-percent cutback in the employment of foreign workers for 1965 and 1966. However, this reduction policy was difficult to monitor, and it did not lead to a reduction in the number of aliens.[9] The foreign resident population continued to grow because more and more workers extended their length of stay and brought their families into the country. The size of the foreign population increased from just over 800,000 in 1965 to more than 980,000 in 1970 and more than a million by 1972.

In 1969 a second movement for a national referendum was launched by a group called "National Action Against the Over-Foreignization of People and Country." The initiative, which was virtually identical to the 1965 proposal, came to a vote in 1970. It was defeated by 54 percent to 45 percent.[10] At least three other unsuccessful national referenda campaigns aimed at markedly reducing the size of the foreign population were conducted over the next several years. Despite the

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[8] Miller, Mark J. Guestworkers: The Lessons of Western Europe's Foreign Labor Experience, 1963–1978. In U.S. Departments of Justice, Labor and State. Interagency Task Force on Immigration Policy. Washington, D.C., 1979, p. 492.

[9] Ibid.

[10] Hoffman-Nowotny, Hans-Joachim, and Martin Killias. Labor Importing: Switzerland. In Krane, Ronald E. International Labor Migration in Europe. New York, Praeger Publishers, 1979, p. 55.

defeat of these measures the fact that they could generate a sizable following is significant, because as one commentator noted, Switzerland is "a country where a decision to expel even a minority of the migrants would undeniably have severe consequences for the Swiss economy."[11] Another observer has summed up the Swiss social and political climate as follows:

> The Swiss public is determined that, whatever the price of restrictions in terms of growth, inflation and liquidity, preservation of its national identity shall come first.[12]

In 1970 the Government intensified its stabilization measures by declaring a ceiling on the total number of residency permits that would be authorized, and by establishing yearly quotas of residency permits for each canton. In 1975 it cut the quotas of annual work permits for each canton by two-thirds.[13] Since the end of 1974 the objective of reducing the size of the resident foreign population has been achieved. From the 1974 high of 1,064,500, the foreign population has steadily fallen to 1,012,700 in 1975; 958,600 in 1976; and 947,600 in 1977. However, its foreign population still constitutes 15 percent of the total population which is a higher percentage than any other European nation except for Luxembourg and Liechtenstein.

Under Swiss law there are three categories of aliens. The first consists of seasonal workers who receive residence and work permits limited to a maximum of 9 months. They may not bring their families, and moving from one canton to another, or changing occupation or job is usually impossible. The second category—yearly residents—must renew their work and residence permits annually. During the first year of residency they may not change their job, occupation, or canton, and even after a year they must obtain a separate permit to do so. These separate permits are granted only if the situation in the labor market allows. According to present practice in some cantons, such permits are not granted in order to protect Swiss and permanent resident alien workers.[14] The final category is permanent residents. These have resided in the country for more than 10 years and have been granted "establishment status." They enjoy the same rights as Swiss citizens except for the right to vote. By 1977 approximately 70 percent of the aliens in Switzerland had acquired establishment status.

Switzerland's policy has always been explicit that its purpose was to recruit manpower, not potential citizens. Therefore, it is not surprising that under current conditions it is virtually impossible for most immigrants to receive Swiss citizenship.[15] The minimum residency requirement is 12 years, the system for granting citizenship is highly complex requiring both cantonal and federal ratification, and stiff fees are charged by some cantons. The result has been a low naturalization rate, as evidenced by the following table:

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[11] Freeman, Gary P. Immigrant Labor and Racial Conflict in Industrial Societies. Princeton, N.J., Princeton University Press, 1979, p. 324.

[12] Kindleberger, Charles P. Europe's Postwar Growth. Cambridge, Mass., Harvard University Press, 1967, p. 47.

[13] Miller, Mark J. Guestworkers: The Lessons of Western Europe's Foreign Labor Experience, 1963-1978, p. 493.

[14] Hoffman-Nowotny, Hans-Joachim, and Martin Killias. Labor Importing: Switzerland, p. 59.

[15] Ibid., p. 60.

NATURALIZED ALIENS AS A PERCENT OF ALL ALIENS [16]

Year	Aliens naturalized	Percent of all aliens
1960	3,005	0.6
1965	3,478	.4
1970	6,939	.7
1975	9,891	1.0

It has been said that: "* * * the Swiss have gone out of their way to make the path to naturalization long and arduous." [17]

Federal Republic of Germany.—For the decade immediately following World War II, West Germany had no need to recruit foreign labor. Its economy had been devastated by the war, unemployment was high, and several million refugees and others displaced by the war remained or resettled in West Germany. It was not until the mid-1950's that it became apparent that the indigenous labor force would be insufficient to keep pace with economic development. In 1955 a labor recruitment agreement was entered into with Italy, to be followed by several others: Greece and Spain in 1960, Turkey in 1961, Morocco in 1963, Portugal in 1964, Tunisia in 1965, and Yugoslavia in 1968.[18]

Massive migration of foreign workers into West Germany did not occur until 1961 when the construction of the Berlin Wall cut off the steady flow of refugees from East Germany. In 1960 only 279,000 alien workers were employed. By 1966 this number had risen to over 1.3 million. During the recession of 1966–67 the number declined to about 900,000, but then rose sharply again until by 1973 the 2.5-million mark—nearly 10 percent of the labor force—had been surpassed.

Labor recruitment was placed in the hands of the Federal Labor Department—the Bundesanstalt für Arbeit. Satellite offices were established in the major supply countries to process applications for employment. These offices screened the health, aptitude and legal status of applicants, and arranged for their transportation to West Germany. Employers wishing to employ foreign workers applied to local labor offices in Germany where they had to prove that accommodations for the guestworkers could be provided. They also had to pay a fee, plus the costs of recruitment, medical care, food, and travel.[19]

Under the German system, a guestworker must have both a work and a residence permit. Initial work permits are generally valid for 1 year and can be revoked if the employment contract is broken. Next, 2-year renewable permits are issued. Work permits may be limited to certain occupations, factories, or jobs. After 5 years the foreign worker qualifies for an unconditional permit, and after 8 years for a permanent work permit. The residence permit also may be restricted to certain areas, to a certain period of time or by other conditions. It generally is issued for only 1 year, but may be renewed.

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[16] Ibid., p. 58.
[17] Matasar, A. Labor Transfer in Western Europe: The Problem of Italian Migrant Workers in Switzerland, quoted in Miller, Mark J. Guestworkers: The Lessons of Western Europe's Foreign Labor Experience. 1963–1978, p. 513.
[18] Reimann, Horst and Helga. Labor Importing: Federal Republic of Germany. In Krane, Ronald E. International Labor Migration in Europe, p. 66.
[19] Salt, John, and Hugh Clout. Migrations in Post-War Europe, p. 98.

The major exception to these procedures is for citizens of the other members of the European Economic Community (EEC). They have the right to enter West Germany to seek employment, and they are entitled to a 5-year residence permit which is renewable so long as the worker has a job. Even if they lose their job they may not be expelled unless they are a danger to public safety and order.

The West German ban on the further immigration of foreign workers from non-EEC countries took effect in November 1973. Although official pronouncements emphasized the recession as the reason for imposing the ban, a number of commentators have suggested that other important reasons included rising social welfare costs and increasing political tensions.[20] Despite the ban, the need for foreign workers has not disappeared. German officials have stated that 1.8 million foreign workers are essential to the current economic division of labor in society.[21] Simultaneously with the immigration ban, steps were taken by the Government to stabilize and improve the conditions of the remaining guestworker population. Family reunion is now permitted after 1 year, restrictions on mobility have been liberalized, and social services have been made generally available for guest workers and their dependents. After 1974 the size of the foreign workforce decreased from 2.4 million to 1.9 million in 1977, but due to the liberalized family reunion rules, the total foreign population remained almost the same at close to 4 million. In 1976 half of the guestworkers had been present in the country for more than 6 years.[22]

Naturalization is quite difficult in West Germany. An alien may become a citizen only after a minimum residence of 10 years, and only if other prerequisites are fulfilled such as competence in the German language, basic knowledge of the history and laws of the country, and no criminal record. Even if all the prerequisites are met, citizenship will be granted only if it is in "the interest of the Federal Republic of Germany." In essence, it is left to the discretion of government officials, and since it is German policy that Germany ought not become a country of immigration, only a handful of guestworkers become citizens each year.[23]

France.—The significant feature of France's foreign worker policy is that from the beginning, the migrants were viewed as permanent settlers. By the end of World War II, France had been experiencing a declining birth rate for many years, and its population's age distribution was sharply skewed toward the older brackets. Many individuals, including Charles de Gaulle, advocated a program of permanent, large-scale immigration for the purpose of repopulation.

The basic law governing French immigration policy was passed on November 2, 1945. The heart of the legislation was the creation of the National Immigration Office (ONI) which was to hold a monopoly over the recruitment of foreign labor. From the beginning the ONI proved incapable of processing sufficient numbers of workers. Its cumbersome procedures, fees, and long waiting periods led employers to circumvent the ONI by recruiting their own workers abroad or by hiring illegal entrants. The Government sanctioned this state of affairs

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[20] Rist, Ray C. "Hewers of Wood and Drawers of Water." Across the Board, v. 16, October 1979, p. 64.
[21] Ibid., p. 69.
[22] Martin, Philip L. Guestworker Programs—Lessons from Europe, p. 26.
[23] Miller, Mark J. Guestworkers: The Lessons of Western Europe's Foreign Labor Experience, 1963-1978, p. 510.

by providing easy access for illegals to a process called "regularization." Under this procedure, immigrants who had arrived as tourists or had entered the country illegally, but who had subsequently found employment, could receive work permits from the Government. The process reached its peak in 1968 when more than 80 percent of all officially registered migrant workers had their status regularized instead of entering through official channels.[24] What had been intended as a program of organized migration in fact turned out to be spontaneous and uncontrolled.

One consequence of the chaotic nature of immigration to France was the development of what have been termed "the most reprehensible social conditions of any group of workers in Europe." [25] One commentator has described the conditions as follows:

> Unable to secure adequate shelter at a price they could pay, the migrants, often with their families, congregated in and around the large industrial centers, throwing up shanty towns built of tin cans and cardboard (*bidonvilles*). Here they lived in unbelievable squalor, without plumbing, heat, or medical care. Others sought shelter in cellars and attics. Exacerbating the problem was the fact that in addition to the large numbers who entered France as tourists and became regularized, an undetermined number entered the country illegally and were never officially "counted" by the government. Fearing that they would be sent home, or simply unaware that regularization was a real option, these *clandestins* led a harried existence, sleeping wherever they could, and often staying one step ahead of the police.[26]

The Social Action Fund (FAS), a social welfare agency created in 1958 to deal with special problems of immigrants, was active in the field of housing, but given the severe shortage of decent housing and the size of the immigrant population—which by the end of 1960's exceeded 3 million—its efforts proved to be insufficient.[27]

The final years of the 1960's saw a decided shift in French immigration policy. One reason for the shift was increased tensions between the immigrant and native populations. Another was concern over the role of immigrants in a wave of strikes, protests, and demonstrations which occurred in May–June 1968. A government circular issued in July of 1968 decreed that the regularization of manual and semiskilled workers would henceforth be prohibited, and that residence permits could be refused to illegal immigrants seeking any job on a list of positions for which there was an oversupply of workers. The aim of the circular was to curtail spontaneous immigration and to revitalize the role of the ONI. Several other circulars and policy statements declaring the Government's intention to end illegal immigration and strictly control the use of the regularization process were issued during the course of the next several years.

In 1969 the Social and Economic Council adopted a report which called for a policy of "selective immigration." Noting that over the years fewer Europeans had been migrating to France, and that they were being replaced largely by North Africans, the report concluded:

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[24] Freeman, Gary P. Immigrant Labor and Racial Conflict in Industrial Societies, p. 77.
[25] Ibid., p. 78.
[26] Ibid.
[27] Ibid., p. 170.

It seems desirable, therefore, more and more to give to the influx of non-European origin, and principally to the current from the Maghreb [Algeria, Morocco, Tunisia], the character of a temporary immigration for work, organized in the manner of a rapid process of introduction which would be linked as much as possible to the need for labor of the business sectors concerned and in cooperation with the country of origin.[28]

In other words, only those persons who were "assimilable" would be encouraged to settle permanently, that is, Europeans, and the others would be viewed as strictly temporary labor. In the summer of 1973 France experienced its most serious episode of racial violence, resulting in the murder of 11 North Africans within 1 week.[29] The episode precipitated the suspension by the Algerian Government of all further emigration of its citizens to France.

In July 1974 the French Government placed a ban on all further non-EEC immigration to France, stating as its reason the need for "time to prepare new measures to improve the situation of those already present in France." [30] Between 1973 and 1977, the number of foreign workers decreased by 346,000, but due to the continued admission of dependents of workers already in the country, the foreign population increased from 3.9 to 4.2 million. In 1973 one-third of France's immigrants had been family members, but by 1976, 77 percent were spouses or children.[31] In September 1977 the Government sought to ban further family immigration, but the outcry was so strong that the ban was quickly rescinded. France continues to permit family reunion, but only if the new arrivals agree not to seek employment.[32]

In 1977 a program was initiated to give financial assistance to encourage migrants to return home. A departure grant of about $4,500 plus airfare for a family of four is offered for those surrending a work or residence permit. The program has been generally unsuccessful. In the last half of 1977, 13,214 persons departed. Over half of those who surrendered work permits were unemployed, thus prompting the suspicion that the departure grants had not induced many returns that were not already planned.[33]

Given France's history of encouraging permanent settlement, it is not surprising that its work permit system is comparatively uncomplicated. A guestworker first receives a 1-year temporary permit revocable upon breach of the employment contract. After this period, the worker qualifies for a renewable 3-year permit; after 10 years, he acquires permanent resident status. France also has relatively open access to citizenship. Only 5 years' residence is required, and administrative "redtape" is minimal. Very few qualified foreigners are denied citizenship.[34] In 1977, 51,000 persons were naturalized, although one-third of these were children born of a foreigner and a French citizen.[35]

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[28] Calves, Corentin. Le probleme des travailleurs etrangers, quoted in Freeman, Gary P., ibid., p. 88.
[29] Sheehan, Edward. Europe's Hired Poor. New York Times Magazine, Dec. 9, 1973, p. 72.
[30] Freeman, Gary P. Immigrant Labor and Racial Conflict in Industrial Societies, p. 96.
[31] Martin, Philip L. Guestworker Programs—Lessons from Europe, p. 22.
[32] Ibid., p. 29.
[33] Ibid., p. 28.
[34] Miller, Mark J. Guestworkers: The Lessons of Western Europe's Foreign Labor Experience, 1963-1978, p. 512.
[35] Martin, Philip L. Guestworker Programs—Lessons from Europe, p. 29.

Sweden.—Sweden was a neutral during World War II, but it opened its borders to refugees and displaced persons from neighboring countries such as Estonia, Latvia, Lithuania, Norway, and Denmark. The total number of foreigners residing in the country increased from 24,000 in 1939 to 185,000 by 1944. A substantial number of these refugees settled permanently, marking the end of Sweden's cultural and ethnic homogeneity.[36]

Like Switzerland, Sweden's economy was undamaged by the war. Despite the inflow of refugees, when it experienced an economic boom after the war, its industries were faced with severe labor shortages. Unemployment, which had been 10 percent at the beginning of the 1940's, fell to approximately 3 percent by the end of the 1940's. The expression "overfull employment" was coined to describe this situation which lasted well into the 1960's.[37]

Between 1946 and 1950, 10,000 foreign workers, mainly from Finland, entered the country each year. As early as 1943 citizens of the other Nordic countries (Denmark, Finland, Iceland, and Norway) had been entitled to accept employment in Sweden without labor permits. Visa requirements for Danes and Norwegians were suspended in 1945 and for Finns in 1949.

In 1947 Swedish manpower authorities also began recruiting labor from outside the Nordic countries. Recruitment was mainly from Italy, but also from Austria, Belgium, Greece, and Hungary. However, during the 1950's only about 14,000 workers were recruited from non-Nordic countries, as compared to the total immigration figure of 258,000 for the decade.

In 1954 the Common Nordic Labor Market was formed. Citizens of each of the five member nations are guaranteed free movement within the common labor market. Since 1954 nearly 1 million persons have moved among the Nordic countries. Close to 40 percent of this flow is attributable to Finnish emigration to Sweden, and another 20 percent is attributable to returns to Finland.[38]

Despite early labor migrations, in the 1950's it was not generally foreseen by Swedish authorities that Sweden would become a major country of immigration, and the Government never adopted a long-range explicit immigration policy. Therefore, the country was taken by surprise in the 1960's when spontaneous immigration from Southern Europe and from Finland increased dramatically. When the influx continued despite a recession in 1966, trade unions and other political groups began to call for tighter control on labor migration from non-Nordic countries. It was not until the mid-1960's then, that serious attention was focused on the potential problems of continuing uncontrolled immigration.

Several steps were taken to gain better control over the inflow of foreigners. A 1966 ordinance required that work permits be applied for only at Swedish embassies and consulates abroad, not after arrival in the country. In 1967 this regulation was made stricter by requiring that all non-Nordic citizens must have employment, a work permit, and housing arranged before entering Sweden. In a 1968 resolution, Parliament declared the principle of "controlled immigration" a

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[36] Widgren, Jonas. Labor Importing: Sweden. In Krane, Ronald E. International Labor Migration in Europe, p. 29.
[37] Oberg, Kjell. Treatment of Immigrant Workers in Sweden. International Labour Review, v. 110, July 1974, p. 2.
[38] Widgren, Jonas. Labor Importing: Sweden, p. 20.

major policy objective. In 1969 a central agency on immigration—the National Immigration and Naturalization Board—was established and given the decisionmaking authority with regard to the granting of permission for aliens to enter Sweden.

More than any other European country, Sweden has undertaken to further the social adjustment of immigrants and to promote social equality between them and the native population. Immigrants are offered tuition-free Swedish language courses subsidized by the Government. Employers are compelled by law to give foreign employees up to 240 hours leave with pay in order to attend such courses. A special program begun in 1977 provides free education for illiterate immigrants. A special state foundation publishes a weekly newspaper for immigrants in 12 languages. Immigrant Service Bureaus are located throughout the country for the purpose of providing immigrants with information and interpreter services. As of 1976 all foreigners who live in the country for 3 years can vote and run for office in local and regional elections.

The Swedish Government has also officially recognized the principle of "ethnicity" or "cultural pluralism," and has acknowledged the rights of ethnic groups to maintain their cultural heritages.[39] Since 1977 all municipalities in Sweden have been required to provide immigrant children with education in their native tongue whenever it is requested. The Government has provided support to immigrant and ethnic minority organizations. Grants are awarded to public libraries for the acquisition of literature in minority languages.

Sweden's policies on permanent residence, naturalization, and family reunification are also quite liberal. After 1 year's residence foreigners are entitled to a permanent resident permit. Nordic citizens may be naturalized after 2 years and non-Nordics after 5. Family reunification with no minimum waiting period has always been allowed.

Since 1974 government policy toward immigration of non-Nordic workers has been very restrictive. Despite this policy and the fact that the Swedish economy has been facing a serious recession, the size of both the foreign work force and the total foreign population increased between 1973 and 1977 (see table 9). One reason is the high rate of unemployment in Finland. Because labor may migrate freely among Nordic countries, many Finns have moved to Sweden. Another reason is an increased influx of refugees and others who apply for admission on humanitarian grounds. In fact, in recent years immigrants to Sweden have consisted more and more of these groups and less of labor. Of about 40,000 immigrants in 1977, perhaps only the Finns and other Nordics—about 25 percent—constituted "true" labor migration.[40]

C. Consequences of European Labor Migration

The economic and social consequences of labor migration have been debated at some length. While there is a body of opinion which argues that labor migration had negative economic consequences for Europe,[41] most commentators on the subject agree that without the additional

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[39] Ibid., p. 27.
[40] Ibid., p. 37, 39.
[41] Mishan, E. J. Does Immigration Confer Economic Benefits on the Host Country? In Economic Issues in Immigration. London, The Institute of Economic Affairs, 1970, p. 105.

manpower supplied through guestworker programs, Europe's economy would not have been able to prosper and grow as it did during the 1950's and 1960's.[42]

The question more frequently considered in recent years has been whether the unforeseen social and political costs of European labor migration outweighed the benefits.

As discussed earlier, with the exception of those countries which viewed labor migration as permanent settlement, when guestworker programs were initiated they were generally viewed as a temporary phenomenon—a short-term supplement to the native labor force during periods of economic boom. In times of unemployment it was assumed that migrants would return to their home countries. It also was assumed that most migrants would "rotate," that is, they would enter the country under short-term contracts of 1 to 2 years, earn as much money as quickly as possible, and depart to be replaced by another migrant. To a large extent this is what happened, especially in the earlier years.[43] But by the end of the 1960's it became clear that a significant and ever-growing core of migrants and their families had become permanent residents. The expectations of the West Europeans did not work out as planned for several reasons.

First, the need of host countries for migrant labor turned out not to be temporary. The availability of a large foreign work force made it possible to expand industrial facilities beyond the capacity of the indigenous labor force,[44] resulting in continuing demands for workers by employers. The process has been described as follows:

> In the short run, with excess capacity of plant but full employment of labor, immigration pays off. Wages are held down, profits are maintained, it is the best of all possible economic worlds. In time, however, high profits stimulate plant expansion, which makes it not only desirable, but now imperative to have foreign workers.[45]

It also has been theorized that the presence of a sizeable foreign population itself created increased demands for goods and services—demands that could be met only through the importation of more labor. This theory has been labeled the "self-feeding process of economic migration." [46] Finally, it has been suggested that rising affluence and education levels caused an exodus of native workers from dirty or otherwise undesirable jobs which migrants were willing to perform. Europeans became loath to return to these less desirable tasks, even in times of economic downturn, thus creating a permanent "need" for foreign workers.[47]

There are also several reasons why individual migrant workers and their families tended to settle permanently to a far greater extent than had been anticipated. One suggestion is that the high cost of living in Western Europe made it necessary for many migrants to extend their stays in order to reach their desired savings goals. The longer

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[42] Kindleberger, Charles P. Europe's Postwar Growth, p. 3.
[43] Organization for Economic Cooperation and Development. Migration, Growth and Development. Paris, 1979, p. 16.
[44] Freeman, Gary. Immigrant Labor and Working-Class Politics. Comparative Politics, v. 11, October 1978, p. 26.
[45] Kindleberger, C. P. Mass Migration, Then and Now. Foreign Affairs, v. 43, July 1965, p. 651.
[46] Bohning, W. R. The Economic Effects of the Employment of Foreign Workers with Special Reference to the Labor Markets of Western Europe's Post-Industrial Countries. In the Effects of the Employment of Foreign Workers. Paris, Organization for Economic Cooperation and Development, 1974, p. 64–65.
[47] Ibid., p. 49; Freeman, Gary. Immigrant Labor and Working-Class Politics, p. 27.

they stayed, the more they became infused with the lifestyle and culture of the host country, and the more difficult they found it to return home, especially with the prospect of more stable, higher paying employment in the host country.[48] The immigration ban following 1973–74 most likely caused many migrants to become permanent because workers feared that if they left, they would never get another work permit to return. Studies have indicated that, regardless of nationality and background, those who extended their originally short-term intended stays were more numerous than those who kept to or curtailed them.[49]

Migrants were able to renew their work permits and extend their stays—long enough to attain family reunification rights and often long enough for permanent resident status—because the "rotation" principle was never fully implemented. Employers preferred to retain those workers who had proved satisfactory and for whose services there was a continuing need. They protested the cost and inefficiency of continually having to recruit and train new workers. Most countries also wanted to avoid "the seemingly inhumane policy of uprooting one migrant simply to replace him with another." [50]

Increasing permanence created a number of unforeseen problems for host countries. First, guestworker programs proved to be expensive in terms of public outlays for social services, housing, education, and health care. Originally host countries benefited from the fact that guestworkers—mostly young, single males—required little in the way of social services, but permanence and family reunification led to major demands on these resources. The children of migrants in particular required extra expenditures. In 1975 Germany had almost 1 million foreign children in its school system. In France, 780,000 foreigners were under age 15 and an additional 218,000 were aged 15–19. In Sweden, nearly 20 percent of the foreign population (78,000 out of 410,000) were school-aged children.[51] It has been pointed out, however, that the additional costs for social services should not be overstated. Host countries do not pay for rearing guestworkers, yet they reap the benefits of their economically active years.[52] Nevertheless, the mounting public expenditure requirements generated by the influx of guestworkers and their families was a major reason why the West Europeans discontinued their recruitment of foreign labor.

The presence of large numbers of foreigners also gave rise to serious social and political tensions. The emergence of racial conflict was one of these. Concerns about "overforeignization" in Switzerland led to several national referenda on the subject of expelling immigrants. In areas with large concentrations of foreigners, physical clashes between migrants and natives became "disturbingly frequent." [53] As a result, some countries, such as Austria and Germany, passed legislation limiting the proportion of foreigners in certain heavily populated guestworker areas. The most serious wave of racial conflict was that which occurred in southern France in 1973 when several Algerians were attacked and murdered. It has been observed that: "The creation of racial minorities in countries largely homogenous in the past

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[48] International Labour Office. Some Growing Employment Problems in Europe. Geneva, 1974, p. 85–86.
[49] Ibid., p. 85.
[50] Martin, Philip L. Guestworker Programs—Lessons from Europe, p. 38.
[51] Ibid., p. 22–23.
[52] Miller, Mark J. Guestworkers: The Lessons of Western Europe's Foreign Labor Experience, 1963–1978, p. 523.
[53] Organization for Economic Cooperation and Development. Migration, Growth and Development, p. 22.

has been, in retrospect, a process entered into with remarkably little discussion or hesitation." [54]

Guestworkers in Europe overwhelmingly occupy the least skilled and lowest paying jobs. As the following table indicates, in France 80 percent, and in Germany, Switzerland, and Sweden at least 90 percent of foreign workers are concentrated in the "blue collar" industrial and service occupations:

PERCENTUAL LABOR FORCE PARTICIPATION OF FOREIGN WORKERS [55]

Sector	Percent of foreign work force			
	Germany (1972)	Switzerland (1972)	Sweden (1973)	France (1968)
Agriculture	0.9	2.4	3.4	5.7
Mining	3.3	.2	.6	2.7
Industry	76.7	65.6	60.4	63.0
Commerce	5.8	6.0	1.6	8.6
Other services	13.3	25.8	34.0	17.0
Total	100.0	100.0	100.0	100.0

As a result, guestworker populations tended to cluster in the heavily industrialized urban areas where most of these jobs are located. They generally moved into the cheapest, oldest, and most overcrowded housing in rundown parts of the cities that had been abandoned by the native populations. Urban ghettos, with all their attendant social ills, became commonplace throughout Western Europe.[56]

The presence of this highly visible population of migrant workers in inferior social and economic positions created a serious dilemma for the democratic governments of Europe. Although guestworkers had become de facto permanent residents, their economic and political rights were governed by policies intended to apply to a temporary population. They were "denied rights to bring or form families at the outset; often tied to an employer, industry or geographic area; unable to vote or seek elective office; and sometimes denied full participation in the social welfare programs to which their taxes contribute[d]." [57] A report issued by the Commission of the European Communities in December 1974 stated:

> After more than a decade of benefit from migrant labor, the Community finds itself with a large unassimiliated group of foreign workers who share almost all the obligations of the society in which they live and work but, more often than not, have a less than equal share in its benefits and rights. This situation is in the long term intolerable—degrading for the migrant and dangerous for the Community.[58]

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[54] Freeman, Gary P. Immigrant Labor and Working-Class Politics, p. 27.
[55] Widgren, Jonas. Recent Trends in European Migration Policies. International Review of Education, v. 21, 1975, p. 278.
[56] Ball, Robert. How Europe Created Its "Minority Problem." Fortune, v. 88, December 1973, p. 136.
[57] Martin, Philip L. Guestworker Programs—Lessons from Europe, p. 3.
[58] Quoted in Blumenfeld, Yorrick. Europe's Foreign Laborers. Washington, D.C., Editorial Research Reports, v. II, 1975, p. 552.

Despite concessions of many rights by the host countries to the foreign workers in recent years, they remain to a large extent a socially and economically underprivileged group. As a result, they have become the focus of domestic civil rights movements, and the foreign workers themselves have become increasingly militant, often participating in "various forms of agitation, including strikes and street protests." [59]

The conditions of migrant workers also aroused criticism from the international community. Organizations such as the United Nations, the International Labour Office, and the World Council of Churches have expressed concern over the human rights aspects of international migration, and many of them have issued guidelines designed to insure the welfare of migrant workers and their families. In several instances, relations between host and supply countries were impaired. Host governments were criticized regularly for failure to implement or live up to commitments to insure equal wages and living and working conditions for migrants. French-Algerian relations, for example, were strained by the inability of the French to prevent racial attacks on Algerian guestworkers, and Italian-Swiss relations were similarly strained by alleged Swiss neglect of migrant social conditions.[60]

Various experts have predicted that following the mid-1980's Europe may once again experience a labor shortage.[61] But due to the experiences of the last two decades, few believe that Europe will embark again in the foreseeable future on a large-scale program of labor migration. Although future trends in international migration depend on economic and political factors that are difficult to predict, a recent United Nations report described the current outlook as follows:

> At present, however, the prevailing outlook is that international migration is likely to be a less important factor in making good any deficiencies in labor force growth in northern and western Europe in the next 25 years or so than has been the case in the past. This judgement is based on an assessment of political and social trends in the principal countries of immigration. Replies to the Third Population Inquiry among governments, conducted by the United Nations in 1976 indicated that some governments of European countries that had taken in substantial numbers of immigrants to ease labor shortages in the 1960s and early 1970s felt that the benefits of such migrations were becoming outweighed by the costs, at least in the light of social and political, if not economic, considerations. Thus, political and social factors point to some reduction in the international migration of labor, even though economic pressure may call for a rise in the inflow to compensate for the coming reduction in the numbers of young workers.[62]

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[59] Miller, Mark J. Guestworkers: The Lessons of Western Europe's Foreign Labor Experience, 1963–1978, p. 501.

[60] Ibid., p. 498.

[61] Organization for Economic Cooperation and Development. Migration, Growth and Development, p. 32.

[62] United Nations. Labour Supply and Migration in Europe: Demographic Dimensions 1950–1970 and Prospects, p. 286.

III. ISSUES AND OPTIONS

A. Problem Definition

The following is a discussion of issues and options raised by proposals to establish a large-scale temporary alien worker program as a partial solution to the problem of illegal migration. The primary goal of such a program would be to control illegal migration by providing legal channels for it. Recent proposals for a U.S. temporary worker program have not been intended to meet needs created by a manpower shortage, which historically has been the primary reason for such programs in this country and in Europe. However, recent forecasts of U.S. labor shortages in the young adult work force in the 1980's raise this issue as a possible future objective for such a program.

Analysis of the pros and cons of a temporary worker program is complicated by the fact that there is inadequate knowledge about the size and impacts of current illegal migration. For example, there is disagreement about the number of illegal migrants present in the country, and the rate at which they are entering and leaving. There is controversy over their impact on the labor market, or more specifically, on the particular labor markets where they are concentrated. There is also disagreement about whether they are more or less successful economic refugees from less developed countries, the victims of exploitation by U.S. employers, or both.

The size of the illegal migrant population has been estimated as ranging between 3 to 6 million at any given time.[1] It is thought to fluctuate seasonally, in line with the assumption that some of the illegal migrants are, in Wayne Cornelius' phrase, sojourners rather than settlers. The assumption that many illegal migrants are de facto temporary workers is a major argument in favor of a legal temporary worker program.

There are several different schools of thought about the impact of illegal migrants on the labor market. One school argues that their impact is primarily negative, that they compete successfully with those domestic workers who can least afford such competition for the least desirable and stable jobs which make up the so-called secondary labor market. These jobs include seasonal agriculture, service, and industrial jobs which are least apt to be effectively protected by labor legislation and unions.

This school of thought believes that, in addition to displacing U.S. workers at the bottom of the occupational ladder and, increasingly, from better paying and more desirable jobs, illegal migrants adversely affect the wages and working conditions of U.S. workers who are similarly employed. They are thought to do this primarily by providing a steady supply of dependable cheap labor which eliminates

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[1] U.S. Interagency Task Force on Immigration Policy. Staff Report. Washington, U.S. Departments of Justice, Labor, and State, March 1979, p. 30. (Cited as Interagency Task Force report (1979).)

the necessity for increasing wages or improving working conditions in order to attract U.S. workers.

On the other hand, there are those who argue that illegal migrants occupy jobs that U.S. workers do not want, particularly at the wages which employers are able to pay, and thus make it possible for many small enterprises to remain in operation. This school argues that, far from displacing U.S. workers, illegal migrants protect the jobs of the domestic workers employed by small firms and enterprises where illegal migrants are primarily concentrated. This view holds that there is not direct evidence supporting the claims that illegal migrants displace or otherwise adversely affect U.S. workers, and that these claims are based primarily on economic theory.

If there is a general lack of agreement and knowledge about the size and impact of illegal migration, there is an even greater disagreement about how the issue should be addressed. Legislation relating to illegal migration passed the House by wide margins in the 92d and 93d Congresses but did not receive Senate action. A bill was reported by the House Judiciary Committee in the 94th Congress, and related legislation was introduced in the 95th Congress, as was legislation sponsored by the Carter administration. In the 96th Congress, for the first time since 1971 no legislation relating to the problem of illegal migration has been introduced by the key members of the House and Senate Judiciary Committees or sponsored or backed by the administration. This is in part explained by the fact that the whole issue of immigration is under review by the U.S. Select Commission on Immigration and Refugee Policy, which was created by the Congress and is required to report by March 1981. However, it is also a reflection of the Congress' difficulties in dealing with a complex problem which has become increasingly politically controversial with the passage of time.

Commenting on the issue of immigration reform, Eli Ginzberg, Chairman of the National Commission for Manpower Policy, wrote recently:

> * * * a policy of non-intervention need not necessarily be viewed as clearly inferior to one of intervention * * *. Difficult as it is to accept, there are times in the life of a democracy where it may be preferable to suffer the current, often seriously flawed, extant system than to venture upon significant legislative reforms without a preexisting coalition.

Ginzberg commented that, particularly "in the face of such an appalling lack of reliable information—in which the estimates of the total number of illegals vary by 300 to 400 percent—it seems to me the better part of wisdom (and caution) to proceed modestly in recommending new, especially radical forms of societal intervention." [2] A policy of nonintervention regarding illegal migration has more or less characterized the past decade, as regards substantive changes in the approach to the problem, and is clearly a major option for the future. Intervention in the form of an expanded legal temporary worker program is politically highly controversial.[3] Such a program

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[2] Summary of a Seminar on Immigration and Employment Policies, Mar. 23, 1979, p. 2, reprinted in U.S. National Commission for Manpower Policy. Temporary Admission of Foreign Workers: Dimensions and Policies. Special Report No. 34. Washington, 1979, p. 108.

[3] E.g., see Evan Maxwell, Politics of Immigration Could Splinter '80 Democratic Campaign. Los Angeles Times, Nov. 5, 1979, p. 3, 21.

is opposed by, among others, significant segments of both the Mexican-American community and organized labor on the grounds that it would be detrimental to the interests of their constituent groups. Moreover, the increased governmental involvement in the labor market necessary to implement an expanded temporary worker program also might present difficulties for civil libertarians and employers.

The establishment of a temporary alien worker program as an alternative to illegal migration depends not only on its potential effectiveness but also on its political desirability. Just as the fact that an effectively screened 2,000-mile U.S.-Mexican border would reduce illegal immigration has not justified the creation of such a barrier, so an expanded temporary alien worker program may be politically unacceptable regardless of whether it would help control illegal migration. On the other hand, however appropriate nonintervention may seem in the absence of a political consensus and adequate data, it also represents a decision to continue the status quo. Aside from the question of the potential effectiveness of an expanded program, much of the current debate over an expanded legal temporary worker program focuses on whether it would be preferable to the status quo.

Regarding the significance for policymaking of the absence of adequate quantitative information on the size and impacts of illegal migration, the Justice-Labor-State interagency task force noted in March 1979: "The lack of existing data points up the most vexing aspect of the issue—the dilemma of either waiting for more data to become available (with no guarantee that it ever will) while the problem worsens, or acting on the available scanty data with the corollary risk of a misguided policy choice." [4] Some commentators argue that the policy decisions which must be made are apparent despite the scarcity of data—although the various proponents of this view do not all agree on the policy decisions themselves. For example, Peter Schey, the directing attorney of the legal services aliens' rights program of the Legal Aid Foundation of Los Angeles, argued at a recent conference on immigration and United States-Mexican relations:

> The clear trend of all the data is that nobody has yet been able to show a concrete adverse effect [of illegal migrants] on the U.S. economy, despite the fact we've spend hundreds of thousands of dollars trying to establish that. But in practical terms, even if you establish an adverse economic impact, there is simply no way that you can deport between 2 to 6 million people. There's simply no way to come out ahead on that, in terms of a cost-benefit analysis. So that really leaves you with only one solution: legalization of status [on a permanent basis]. You may have to do it every 20 years, maybe every 15 years.[5]

Vernon Briggs, a critic of current immigration policy who opposes an expanded legal temporary worker program, cites a California Court of Appeals ruling in 1970 that the number of illegal aliens in the

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[4] Interagency Task Force report (1979), p. 382.

[5] Cornelius, Wayne, ed. Immigration and U.S.-Mexican relations. Abridged transcript of a conference at the Rockefeller Foundation, New York City, Nov. 21, 1978, p. 66. (Document cited as Rockefeller Foundation Conference (1978).)

Southwest "represent[s] an abject failure of national policy." The court observed further that the lack of corrective action "must be ascribed to a self-imposed impotence of our national government." [6]

The difficulty of effectively implementing the policy embodied in the present immigration law, given the current political climate and the pressure for migration from Mexico, is substantial. Michael Piore argues that, "To give meaning to the philosophy expressed in the current de jure immigration system would probably require either a Berlin Wall on the Mexican border or a national identity card. It might well require both." [7] It is relevant to note here that the 1952 act was enacted less than a year after passage of Public Law 78, the legislative basis for the bracero program, and 2 years before Operation Wetback, a mass roundup of illegal migrants which would be virtually impossible today on both legal and political grounds.

Based on projections for U.S. manpower resources and needs in the next decade, Michael Wachter predicts "that illegal aliens will be in even greater demand in the United States in the 1980's than they are today." [8] Wachter argues that a new immigration policy is needed to control the flow of migrants entering the country:

> It should be recognized that the United States needs a new immigration policy regardless of whether one believes in easing or tightening restrictions on the number of new entrants. In the current situation and with the coming demographic twist [leading to a shortage of unskilled male workers], pressures for increased illegal immigration will grow substantially. As more illegal immigrants become permanent "nonmembers" of society, the potential for social, economic and political disruption will grow. The United States must adopt a workable immigration policy; that is, it must control the size of the flow of immigrants and legalize the process.[9]

The arguments in favor of an expanded temporary worker program as a means of controlling illegal migration are summed up by Carey McWilliams' comments on the early phase of the World War II bracero program:

> Although the wartime agreement was frequently violated it did provide a measure of protection against the hazards and rigors of migratory employment. Over the years the use of Mexican labor to relieve acute manpower shortages in the United States has proved to be of benefit to both nations. The issue has always turned on the choice between planned migration and unplanned immigration. For it is extremely debatable whether, under any circumstances, Mexican workers can be kept from crossing the border. Given the attraction of industrial employment in the United States and the ease with which the border can be crossed, Mexicans will continue

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[6] Briggs, Vernon. Labor Market Aspects of Mexican Migration to the United States in the 1970's. Views Across the Border, Stanley Ross, ed., Albuquerque, University of New Mexico, 1978, p. 212. The case referred to is *Diaz* v. *Kay-Dix Ranch* (1970).

[7] Piore, Michael. The "Illegal Aliens" Debate Misses the Boat. Working papers, March/April 1978, p. 69. (Cited as Piore (1978).)

[8] Wachter, Michael. The Labor Market and Immigration: The Outlook for the 1980's. U.S. Interagency task force staff report companion papers. U.S. Departments of Justice, Labor, and State, August 1979, p. 203. (Cited as Wachter (1979).)

[9] Ibid., p. 217.

to follow the old, familiar paths which lead north from Mexico.[10]

Proponents of a legal program argue that Mexicans have been heading north for employment since the beginning of this century, and that the choice is essentially a binary one—"between planned migration and unplanned immigration." U.S. experience with the bracero program and the European experience with guestworker programs leave no doubt about the many problems inherent in "planned migration"—including the fact that it tends not to proceed as planned. On the other hand, the past 15 years of unplanned migration obviously raise the question as to whether a legal program might be preferable.

The following is an exploration of the issues and options which must be considered in assessing proposals for an expanded legal temporary alien worker program. These issues and options are examined in the context of the preceding analyses of the history of U.S. legal temporary worker programs, and of the European guestworker programs since World War II. Reflecting the historical emphasis of U.S. legal temporary worker programs as well as the predominant thrust of current illegal migration, the following discussion is concerned primarily with a temporary worker program which is limited to Mexico. This reflects the focus of most current discussions of temporary worker programs, but is not intended as an endorsement of such a limitation.

B. Impact on Illegal Immigration

A major question exists as to whether an expanded legal temporary worker program would, in fact, serve as a means of controlling the illegal flow, or whether it would stimulate additional illegal migration by attracting more workers to the United States than could be accommodated by a legal program. With the early history of the bracero program as evidence, opponents argue that a legal program would exacerbate the present situation unless it was large enough to accommodate the majority of workers who wish to come, and loose enough to accommodate U.S. employers who currently hire illegals because they "work hard and scared"—for less money and longer hours than U.S. workers. Such a program, they argue, would inevitably have an adverse effect on domestic workers.

Jorge Bustamante has argued that a new legal program would increase the immigration of undocumented Mexican workers,[11] as have Vernon Briggs and others. In a letter to Secretary of Labor Ray Marshall in response to a request for a review of the current H–2 temporary worker program, Eli Ginzberg, Chairman of the National Commission for Manpower Policy, strongly advised against the expansion of the temporary worker program because, among other reasons, "the assumption that a much enlarged H–2 program would make it possible, in the near or intermediate term, to substantially reduce the inflow of undocumented workers is highly problematic."[12]

In addition to the Mexican migrant, an equally important party to the successful functioning of a large-scale legal temporary worker

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[10] McWilliams, Carey. North from Mexico. Philadelphia, J. B. Lippincott, 1949, p. 268.

[11] Bustamante, Jorge. Commodity-Migrants: Structural Analysis of Mexican Immigration to the United States. Views Across the Border, Stanley Ross, ed. Albuquerque, University of New Mexico press, 1978, p. 198.

[12] Letter, May 1, 1979, p. 3, reprinted in U.S. National Commission for Manpower Policy. Temporary Admission of Foreign Workers, 1979, p. 101.

program is the U.S. employer who, according to Alejandro Portes' analysis, has little to gain from a change in the status quo:

> The specific effect of the illegal character of immigration to the United States reinforces the very conditions which make immigrant labor economically useful. Immigrant workers can be made to labor under conditions of greater exploitation not because of any intrinsic willingness, but because of a structurally determined situation of legal vulnerability. Illegal workers, in turn, represent the most vulnerable sector of immigrant labor. Their status exacerbates those very features which place immigrant workers in the worst working conditions. Illegality, in this sense, yields a more economical solution to employers than the system of legal contract labor adopted in Western Europe * * *.
>
> I am not arguing that illegal migration is the only manner of solving the labor problem in agriculture and smaller urban enterprises. Alternatives exist, like the case of Western Europe documents. The point is that the present role of illegal migration is much more central than generally assumed, for it is not limited to a particular region or a particular sector of the economy. In addition, illegal labor is, from the point of view of employers, a more convenient way of handling the situation than other alternatives. For these reasons the expanding use of illegals has successfully resisted all attempts at administrative control.[13]

As an additional argument against a legal program as a means of controlling illegal migration, the interagency task force notes that, "The European experience suggests that guestworker programs only increase dependency upon foreign labor." [14] Ginzberg also comments on the "addictive" nature of "the more or less regular use of a supply of foreign workers" [15]—referring to legal foreign workers.

On the other hand, it can be argued that many U.S. employers are already addicted to the use of foreign labor, albeit of an illegal nature, and that a legal addiction is preferable to an illegal one. The development of this dependency is traced by the interagency task force back to the bracero program at the end of 1964. This coincided with a period of tight employment in the country as a whole. In addition to continuing in agriculture on an illegal basis, former braceros also moved into the nonfarm sector in response to the comparative labor shortage in many low-wage industries. According to the interagency task force, "it was then that the use of illegal migrants became a nationwide phenomenon, oriented to the total economy rather than just to the farm sector." [16] The task force describes the development of the situation in the 1970's as follows:

> During the early 1970s, illegal migrants became firmly entrenched in low-wage industries and also managed to obtain some employment in the better paying ones such as food processing and construction. Even the high unemployment of 1975–1976 did not produce a reemployment of

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[13] Portes, Alejandro. Labor functions of illegal aliens. Society, September/October 1977, pp. 35–36.
[14] Interagency Task Force report (1979), p. 525.
[15] Letter to Secretary of Labor, Ray Marshall, May 1, 1979, p. 2, reprinted in U.S. National Commission for Manpower Policy (1979), p. 100.
[16] Interagency Task Force report (1979), p. 391.

resident workers in the markets which had come to be dominated by the illegals. The principal reason for that was that employers had come to prefer illegal migrants. A secondary reason was that the presence of illegals had kept wage rates in these markets at depressed levels which were no longer attractive to some of the unemployed resident workers. A related secondary reason was that in the 1975 recession unemployment compensation was extended to 65 weeks and eligibility for benefits was liberalized. This reduces resident worker availability for low-wage jobs.[17]

Proponents of a legal program argue that, for a considerable part of its history, the bracero program provided a better control over work-related temporary migration than exists today. Thus, Mexican Ambassador Hugo B. Margain recently recommended a return to the 1942–64 bilateral agreements, noting that "During these years our countries were much better able to regulate the legal flow of migrant labor than is the present case with its rampant abuses and illegal activities on both sides of the border." [18] Although not in favor of an expanded program, the U.S. Special Study Group on Illegal Immigrants from Mexico, commonly referred to as the Cramton Commission, observed that "while the data are not conclusive, INS believes that it was able to exercise more effective control over the border during the bracero program than it has been able to achieve since the program's termination." [19] Furthermore, proponents argue that a legal program would enhance Mexico's border control efforts, as it did during the bracero period.

A number of analysts of the "push" and "pull" factors motivating Mexican migration have identified underlying economic forces which they argue will continue to propel Mexicans northward within the framework of a legal system, if it is available, and illegally if it is not.

Michael Piore and W. R. Bohning argue that the "pull" factors inherent in our industrialized society are the dominant motive force. According to Piore, "the true determinant of migration flows is the process of economic development in the industrial region, particularly the number and character of jobs available." [20] Piore argues that in an industrialized society there are inevitably a certain number of jobs in the secondary labor market which U.S. workers will not take, if given any alternative, and for which first generation migrants are ideally suited. In a related argument, W. R. Bohning favors a short-term legalized temporary worker program partly on the grounds that "undocumented alien workers are not a marginal element in the United States labour market. They are *necessary* for the smooth functioning of the economy as it exists today." [21] From this perspective, the fact that illegals frequently work for less money and/or longer hours than domestic workers enhances their comparative attractiveness. Thus, Bohning argues that an expanded legal program should

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[17] Ibid., p. 393.

[18] Seiberling, John F. A Mexican Perspective on Illegal Migration. Remarks in the House. Congressional Record [daily ed.] v. 125, Nov. 2, 1979: E5445.

[19] A Program for Effective and Humane Action on Illegal Mexican Immigrants. Final report of the Special Study Group on Illegal Immigrants From Mexico. Washington, U.S. Department of Justice, Jan. 15, 1973, pp. 35–36. (Cited as Cramton Commission report (1973).)

[20] Piore (1978), p. 62. See Pioro, Michael. Birds of Passage. Cambridge, Cambridge University press, 1979.

[21] Bohning, W R. Regularising indocumentados, Migration for Employment Project. World Employment Programme working paper. Geneva, International Labour Organisation, 1979, p. 11. (Cited as Bohning (1979).)

be accompanied by severe employer sanctions for knowingly hiring illegal entrants, as well as by a bar against the illegal entrants' future participation in the program.

Other analysts, including Wayne Cornelius and John Corbett, stress the "push" factors as the dominating force motivating undocumented immigration to the United States. Corbett notes that "the entry of undocumented workers, as measured by apprehensions, is independent of any clear indication of labor scarcity," [22] and identifies this as the main difference between temporary work-related migration in the United States and Europe. Corbett argues that "coping with push-generated immigrants, with immigrants who are, to a degree, economic refugees, creates a series of problems not found in the demand-focused host countries of Western Europe." [23] With regards to the United States, Corbett concludes that, "With all its defects, however, a temporary permit system may prove to be the only near-term way to avoid even greater tension and exploitation than is currently encountered." [24]

Similarly, Wayne Cornelius argues that:

> "Push" factors within the source countries seem to have become even more important within the past decade. It is clear that since the late 1960s, Mexican migrants have responded more to adverse economic conditions within their communities of origin than to conditions in the U.S. Statistical analyses have found that the rate of unemployment in Mexico is the single most important predictor of the volume of legal and illegal Mexican migration to the U.S.[25]

He also notes, "Many economists, however, argue that reducing U.S. demand for immigrant labor will not only be extremely difficult—regardless of the sanctions which might be imposed by government—but quite possibly damaging to the U.S. economy." [26]

Cornelius argues that, given the current pressure from both the sending countries and the United States, it will be extremely difficult for public policy to control the levels of immigration of Mexican and Caribbean workers. "Public policy can, however, have a major impact on the *form* which future immigration will take: legal or illegal, temporary or permanent." [27]

Cornelius strongly supports an expanded legalized temporary worker program, based in part on his conviction drawn from his own and other studies that the greater part of illegal Mexican migrants are sojourners rather than settlers in the United States.

> The weight of the evidence clearly indicates that the majority of Mexicans who now migrate to the U.S. illegally do not aspire to permanent integration into U.S. society. What most of them seek is occasional, short-term access to income-earning opportunities in the U.S.[28]

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[22] Corbett, John G. Mexico-United States and West European Labor Migration: A Comparative Analysis: International Labor Migration in Europe, ed. Ronald E. Krane. New York, Praeger publishers, 1979, p. 229. (Cited as Corbett (1979).)

[23] Ibid., p. 241.

[24] Ibid., p. 242.

[25] Cornelius, Wayne. Mexican and Caribbean Migration to the United States: The State of Current Knowledge and Recommendations for Future Research. Draft, Oct. 28, 1979, p. 127. (Cited as Cornelius (1979).)

[26] Ibid., p. 13.

[27] Ibid., p. 14.

[28] Cornelius, Wayne, Mexican Migration to the United States: Causes, Consequences, and U.S. Responses. Cambridge, MIT, July 1978, p. 26.

At the same time, he argues that "police-type measures" would have the result of turning many of the sojourners into reluctant settlers by eliminating their freedom of access, following the pattern of Western Europe.

> Those who are already in the U.S. illegally will have a stronger incentive to remain here, thus turning what is now a largely floating population of migrant workers into an increasingly permanent population. This shift is inevitable, if the migrants fear that they will not be able to return to the U.S., except with great difficulty and expense. This is exactly what has happened in Western Europe since 1973–1974 when severe restrictions were imposed on immigration from developing countries.[29]

In contrast to "police-type measures," Cornelius contends that an expanded temporary alien program would have a considerable chance of success because it would be based on a recognition of the forces underlying the current illegal migration, without the abuses inherent in the illegality of the current migration. However, in suggestions for the actual implementation of such a program, discussed subsequently, he argues that the numbers would have to be curtailed and controlled.

The options for replacing the current illegal migrant flow with a legalized temporary worker program span a continuum, ranging from recognition and regularization of the present situation at one extreme, to efforts to substantially reduce the numbers of alien workers at the other. The latter approach runs the risk of undercutting the legal program by making it inadequate for both workers and employers and encouraging the continued supplementary flow of illegal migrants. However, legalizing the entry of 3 to 4 million workers into a country currently faced with high unemployment presents almost insuperable problems.

The next section discusses the potential impact of an expanded legal program on the domestic labor force.

C. Impact on U.S. Workers

In the final 10 years of the bracero program, the Mexican workers replaced illegal migrants as the main source of temporary alien labor in the U.S. However, the bracero program came under increasing attack because of its adverse impact on domestic workers in bracero-dominated areas and occupations. It has been observed that the "bracero program was finally terminated by the United States due to growing political opposition to it. It fell victim to the Kennedy administration which ended it as a means of opening up more jobs for the unemployed." [30]

Ten years after the termination of the bracero program, the Cramton Commission articulated the arguments in favor of a renewed large-scale legal program as a means of controlling illegal migration, but noted that "a majority of members believe that the economic and social problems make this approach undesirable." [31] They observed that "the overwhelming problem with the importation of Mexican

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[29] Ibid., p. 97.
[30] Kiser and Kiser, eds. Mexican Workers in the United States. Albuquerque, University of New Mexico press, 1979, p. 6.
[31] Cramton Commission report (1973), p. 36.

laborers is that the economic gains which they made would be realized at the expense of American workers.[32]

David North and Allen LeBel have argued that, "Mass non-immigrant worker programs tend to have a heavy, depressing impact on microlabor markets; employers stop competing for resident workers, and the nature of the work tends to freeze (as a guaranteed supply of alien workers ends the employers' interest in job redesign or mechanization)." [33] Walter Fogel, also an opponent of an expanded temporary worker program, argues that "all native workers should have access to an adequate paying job before outside competitors are let into the country." [34]

The principal rebuttal to these arguments turns on the comparative impact of legal temporary workers and illegal migrants. Recent reports of widescale exploitation of illegal migrants in the garment industry in New York and Los Angeles indicate, in addition to the exploitation of the workers themselves, that an undermining of U.S. labor standards may be a direct result of the workers' vulnerability because of their illegal status.[35]

The avoidance of adverse impact on U.S. workers probably would be the major consideration in the structuring and administration of an expanded temporary alien worker program. An example of the type of situation to be avoided is the domination by alien workers of a single industry, as is the case with the Filipino domination of the construction industry in Guam. Arguably, it would be desirable to enlist the support and cooperation of labor unions. Cornelius noted that among Mexican migrants he interviewed in California and Illinois, "the single most powerful predictor of wage levels was not legal status but *labor union membership*." [36] While organized labor is generally on record as opposing a legal temporary worker program, on the other hand, several unions have been active in organizing illegals, and perhaps could be induced to include legal temporary workers in their membership as well. According to Cornelius, such a move is not likely to be opposed by the workers themselves. "Today's Mexican migrants to the U.S.—illegals as well as legals—generally do not resist unionization; quite the contrary, they vastly prefer unionized employment because of the much higher wages and fringe benefits (e.g., low-cost health care) that union contracts provide." [37]

The proponents of an expanded temporary worker program argue that its purpose would not be to provide U.S. employers with legalized cheap labor, but to insure that all workers in the United States are protected by the same laws and standards. This is not currently the case, nor was it the case under the bracero program. Under Secretary of Labor John F. Henning testified in 1963 that "being an American citizen places one at a serious disadvantage" under Public Law 78, the law authorizing the bracero program, "because the simple fact is that under the present system an employer can refuse to offer domestic workers the same terms and conditions that he is required to offer alien workers." Quoting further:

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[32] Ibid.
[33] North and LeBel (1978), p. 215.
[34] Fogel, Walter. Mexican Illegal Alien Workers in the United States. Los Angeles, University of California, Institute of Industrial Relations, 1978, p. 160. (Cited as Fogel (1978).)
[35] E.g., see Buck, Rinker. The New Sweatshops: A Penny for Your Collar. New York, Jan. 29, 1979, pp. 40–48.
[36] Cornelius (1979), p. 205.
[37] Ibid.

If the domestic worker refuses to accept the job at less favorable terms, the employer is permitted to bring in Mexican workers who are then afforded the very terms and conditions which were denied to our own workers.

This situation exists basically because of the limited authority vested in the Department of Labor under P.L. 78. The legislative history of that law makes it abundantly clear that the Congress did not intend to permit the Secretary of Labor to require, as a condition of obtaining Mexican workers, that all of the same terms and conditions afforded Mexican workers be offered first to domestic workers.[38]

Proponents of an expanded legal program argue that illegal migrants are attractive to certain employers because of their illegality and the opportunities for exploitation which this presents and that legalization would eliminate this competitive advantage over U.S. workers, particularly in the secondary labor market. Some proponents also argue that temporary alien workers are needed by our industrialized economy to fill certain seasonal agricultural and service jobs which U.S. workers are not willing to take, partly because the option of welfare is available to U.S. workers.

The major argument in support of an expanded temporary alien worker program, given the current unemployment rates, is that we already have a large-scale illegal temporary worker program, and that it would be better for both the U.S. and alien workers, as well as for our national conscience, if it were legalized. Opponents argue that it would be better still from the point of view of the U.S. workers and the society as a whole if the alien workers were permanently removed from the country. Based on an analysis of the European experience with guestworker programs, Philip Martin writes:

> Converting currently illegal aliens into legal guestworkers may allow more control over the illegal alien population, but a control obtained at longer-term economic, social and political costs. Guestworker programs are like migrant farm labor systems in this respect. Despite the best intentions of governments, employers, and individuals, guestworker programs wind up providing short-term economic benefits at the expense of future problems with disadvantaged permanent residents, children who are ill-equiped to be upwardly mobile, and jobs which native workers continue to shun. Instead of postponing the restructuring required at home and abroad by initiating guestworker programs, sending- and receiving-societies may be better off if each faces up to the labor market problem at hand.[39]

Looking to the future, the labor supply and demand situation projected for the 1980's is of particular interest in the immigration context. According to projections by, among others, Harold Wool and Michael Wachter, the number of young unskilled workers entering the U.S. labor force will decline in the 1980's.[40] Quoting Wachter:

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[38] S. Rept. 391, 88th Cong., 1st sess., 1963, p. 16.

[39] Martin, Philip. Guestworker Programs, Lessons from Europe. Prepared for the Joint Economic Committee, U.S. Congress. Washington, the Brookings Institution, June 1979, p. 68.

[40] Wool, Harold. The Labor Supply for Lower Level Occupations. R. & D. Monograph 42./U.S. Department of Labor, ETA, 1976, p. 106. See also Clark Reynolds, Labor Market Projections for the United States and Mexico and their Relevance to Current Migration Controversies. Palo Alto, Stanford University, 1979.

> The bottom line of the labor supply analysis is that, by 1985–1990, the number of young workers in the labor force will be declining. The population in the younger age group will be falling and their participation rates, as opposed to the unprecedented increase during the 1970s, will be largely flat. Comparing 1970–1977 with 1985–1990 indicates a demographic transition of immense proportions. The changing outlook for immigration policy is largely a function of this twist in the demographic age structure of the labor force.[41]

Wachter writes that, "In the 1980's, the trade-off between accepting more immigrant workers and improving the economic position of the domestic disadvantaged population is likely to become a critical public policy issue." [42] In particular, he sees the immigration issue as possibly "the 'swing' factor for the possible social improvement of young blacks," [43] whose salaries will rise in a tight labor market, but will not rise if the labor shortage is significantly cushioned by the legal or illegal importation of large numbers of alien workers.

Based on his projections, Wachter concludes that the demand for illegals will be even greater in the 1970's than at the present time. In this context, "from a purely economic viewpoint," he asserts that "there are many advantages to a kind of 'guest worker' policy." Quoting further:

> The system has greater flexibility, than alternative policy options, in adjusting the stock of guest workers in either direction. This advantage is particularly important for monitoring the effects of the system on the relative economic gains of disadvantaged unskilled native workers.[44]

Subsequently, following a strong recommendation that a new immigration policy be adopted by the United States, Wachter notes:

> The key policy parameters of a new immigration policy are the number of immigrants to be admitted each year and their status. Once the United States gains control over the number of immigrants, it can determine the desired annual flow by monitoring the relative benefits and costs imposed on the native population.
>
> It is not important to determine immediately the magnitude of the future flow of immigration. What must be determined soon, however, is the status of the now illegal flow of immigrants. From a purely economic position, there is much to be said for a "guest worker policy" similar to that adopted in Western Europe.[45]

While this is definitely a lesser-of-two-evils argument, it is arguable that the choice between the admission of foreign workers on a legal or illegal basis is just such a choice, and will have to be made in the 1980's. Quoting from the interagency task force report, "it is unlikely that the United States will go through the economic adustments which would

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[41] Wachter (1979), p. 181.
[42] Ibid., pp. 166–167.
[43] Ibid., p. 217.
[44] Ibid., pp. 167–168.
[45] Ibid., pp. 217–218.

be necessary to deal with the changed labor supply of the 1980's entirely from within—without reliance on some form of foreign labor. Those adjustments would be painful for many and, consequently, are likely to be avoided." [46]

D. Impact on U.S.-Mexican Relations

According to the interagency task force, "the European experience would indicate that * * * [guestworker] programs are likely to complicate relations with labor source countries in the long run." [47] However, the United States and Mexico already have a highly complex relationship, and have had decades of experience with legal and extralegal "guestworker" programs. The lessons of our past legal programs with Mexico are probably more relevant in some respects than the European experience. The single most important lesson is that the consent of and cooperation between both nations is essential if a legal temporary worker program is to succeed. While it is possible to more or less officially ignore large-scale illegal migration, a legal program, by definition, is subject to both official and public scrutiny. The governments of both the sending and receiving countries tend to be held more accountable for legal programs than they are for illegal migration.

There are a number of arguments in favor of Mexican participation in a large-scale legal temporary worker program with the United States. Prominent among them is the fact that Mexico's labor force is expected to increase by more than 100 percent over the next two decades. The long-term prognosis is hopeful; the population growth rate has slowed from 3.5 percent in 1972 to an estimated 2.9 percent in 1978.[48] However, the short-term future pressure on the labor market is apparent from the fact that almost half of Mexico's population is under 15 years of age. An estimated 600,000 to 800,000 new workers will be entering the already tight Mexican labor market each year for the next 10 years. Current unemployment and underemployment are estimated at 30–40 percent.

The principal arguments in favor of United States participation in a large-scale temporary worker program at this time, in the absence of an apparent labor shortage, are based on the U.S. desire to control the large-scale illegal migration from Mexico, and the abuses inherent in it, which has been underway since the termination of the bracero program in the mid-1960's. However, the shortage of unskilled labor predicted for the United States in the 1980's may replace this as the major argument for such a program. The projected U.S. labor shortage will coincide with a period of rapid labor force expansion in Mexico.[49] From a political point of view, it may be desirable to postpone action on a large-scale guestworker program until this congruity of United States and Mexican interests occurs.

The importance of friendly and stable relations between the United States and Mexico is a fundamental reason for both nations' interest in a legal guestworker program. Quoting from Matthew Nimetz, Counselor of the U.S. Department of State:

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[46] Interagency Task Force report, p. 278.
[47] Ibid., p. 527.
[48] Nagel, John S. Mexico's Population Policy Turnaround. Population bulletin, v. 33, December 1978, pp. 3, 35.
[49] See Reynolds (1979).

> Dominating the relationship between the United States and Mexico is the fact that of utmost importance to the United States is a friendly, stable, progressive Mexico. In addition, but sometimes left unsaid, it is of utmost importance to Mexico that there be a friendly, stable, progressive United States. Both countries have a responsibility to assure that nothing is done that interferes with this basic, mutual goal.[50]

In November 1978 Nimetz stated that, "It is fair to say that the bilateral issue of most pressing concern to the United States is that of migration." [51] While it is arguable that this issue has since been overshadowed by oil and gas, the problem of migration remains of overriding importance to both countries—and as far away from solution.

Immigration has not traditionally been viewed as a foreign policy issue by the United States. Both our 40-year experience with the national origins quota system and our current policy of equal treatment of all nations reflect fundamentally domestic goals and aspirations. The United States' desire in the 1920's to protect and preserve what was perceived as its national heritage, which led to the adoption of the national origins quota system, was repudiated in the context of the civil rights movement of the mid-1960's—as, not entirely coincidentally, was the bracero program. The goal of treating all nations equally, while more palatable on foreign policy grounds is essentially a reflection of domestic values and, it is argued by some, is an unrealistic response to the current demands of foreign policy, particularly as regards Mexico. One aspect of this issue is the question as to whether additional immigrant visas should be made available to Mexico and Canada. This issue is addressed by legislation recently introduced by Senator Edward Kennedy to increase visa allotments for both countries.[52]

Another aspect, of course, is the one currently under discussion—the option of legally formalizing a Mexican temporary worker program. Quoting from the interagency task force report:

> One remedy often proposed for alleviating bilateral tension over this [immigration] issue is the adoption by the United States of a special immigration policy towards Mexico. In a sense, of course, the question of special treatment of immigration from Mexico is academic. The illegal flow of Mexicans has already thrust the United States and Mexico into a special immigration relationship. But before agreeing to modify or legally formalize the existing *de facto* relationship, a thorough review of the likely consequences should be undertaken.[53]

An issue of particular importance in the specific context of U.S.-Mexican relations is the nature of the trade-off between the foreign policy benefits and the impact on the domestic work force. Here again, there are lessons to be learned from our past. The clearly recognized

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[50] Nimetz, Matthew. U.S.-Mexican Relations and the Undocumented Alien Problem. Current policy. Washington, U.S. Department of State, No. 46, November 1978, p. 2.
[51] Ibid., p. 3.
[52] S. 1763 (96th Cong.).
[53] Interagency Task Force report (1979), pp. 287-288.

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foreign policy benefits of the bracero program probably extended the life of the program, as did the recognition of the need to allow for an orderly reabsorption by Mexico of the returning workers. However, these benefits were not sufficient to justify the continuance of the program in the face of the growing evidence of its adverse impact on domestic workers. In the words of one commentator on Public Law 78:

> This law was not enacted as a part of our foreign aid policy. It was enacted to provide a source of needed supplemental farm labor. The fact that the dollars taken home by the Mexican nationals contribute to that country's economy does not constitute a valid argument for allowing the program to operate in a manner which adversely affects a large segment of our own labor market. One can hardly expect the hired American farmworker to carry the ultimate burden of providing foreign aid to Mexico.[54]

It is doubtful that even if a temporary worker program were explicitly proposed for foreign policy reasons, or as part of a North American Common Market package, that it could withstand a showing that it would adversely affect U.S. workers. However, again the caveat must be added—that it adversely affected them more than illegal migration does.

The question remains as to whether the adverse effect of the braceros on domestic workers was the inevitable cost of a program which would provide U.S. employers with an acceptable alternative to illegals—in which case, the prospects for a renewed program look dim. Alternatively, if these adverse effects resulted primarily from structural and administrative inadequacies which can be avoided in a future large-scale program, then much depends upon the form the program takes.

Another important issue which is dealt with here only in passing is the optimum relation of the migration issue to other bilateral issues between the United States and Mexico, such as oil and trade. Beyond this, the suggestion is increasingly being made that Canada, Mexico and the United States form a North American Common Market, modeled in part along the lines of the European Economic Community (EEC). Among the earliest proponents of this idea were David Ronfeldt and Caesar Sereseres, who suggested in June 1978:

> Perhaps a new trilateral approach should be considered: the development of "North American interdependence." This concept would serve U.S.-Mexican relations by treating them within a U.S.-Mexico-Canada framework. Such an approach might surmount some limits and constraints affecting bilateral relations with both neighbors. It could stimulate trilateral innovations that allow greater benefits than accrue from current bilateral dealings, especially in trade and energy relations.[55]

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[54] Spradlin, T. Richard. The Mexican Farm Labor Importation Program—Review and Reform (part II). George Washington Law Review, vol. 30, December 1961, p. 320.

[55] Ronfeldt and Sereseres. Immigration Issues Affecting U.S.-Mexican Relations. Draft paper presented to the Brookings Institution-El Colegio de Mexico Symposium on Structural Factors of Migration in Mexico and the Caribbean Basin, June 28-30, 1978; Washington, D.C., appendix [p. 20].

E. Impact on the Mexican Workers in the United States

Based on our past experience with the bracero program as well as on the European guestworker experience, a number of analysts have opposed a large-scale temporary worker program primarily because of the role of the foreign workers involved in these programs. The implications of a two-track labor force inherent in such programs, with foreign workers brought in to perform services which have allegedly become repugnant to the native population, are seen as being antithetical to the values of a democracy which prides itself on its commitment to equality before the law and human rights. Quoting David North and Marion Houstoun:

> Though not obvious to the casual eye, our traditional proscription against the use of alien contract labor flows from the nation's fundamental commitment to an open society and the principle of equality under law. The adoption of a nonimmigrant worker program substantial enough to make any meaningful contribution to the economy institutes an economically interdependent but socially and politically disparate two-class society of citizens and non-citizen workers. Thus, like the de facto admission of illegals, not only would the de jure admission of significant numbers of nonimmigrants provide cheap labor at the cost of depressing the labor standards in the secondary market and displacing the nation's most disadvantaged workers, their role in the nation would similarly contravene its democratic values, despite the fact that in this instance it represented a policy enacted by law.
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> At bottom, a decision to use aliens—nonimmigrants or illegals—as a supply of cheap, low-skill labor is an attempt to acquire that labor and to adjure its economic and its social costs. That is, of course, a form of exploitation, the de jure or de facto institutionalization of inequities.[56]

The European experience has not been reassuring, as reviewed in part II of this paper and at greater length by such studies as Philip Martin's "Guestworker Programs: Lessons from Europe," and as vividly dramatized in the recent movie "Bread and Chocolate," about Italian guestworkers in Switzerland.

A legal temporary worker program is also opposed by many Mexican-Americans now as it was prior to World War II, and for many of the same reasons (see p. 20). The reaction of the Mexican-American Legal Defense Educational Fund (MALDEF) to a provision of the Carter adminstration bill introduced in the 95th Congress which closely resembled a temporary worker program is indicative of the response of much of the Mexican-American community:

> First of all, it would be inevitable that the subclass of resident aliens which would be created under the Administration's proposal, the majority of whom would be Mexican, would come to be regarded as persons whose place in our

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[56] North, David, and Marion Houstoun. The Characteristics and Roles of Illegal Aliens in the U.S. Labor Market: An Exploratory Study. Washington, Linton & Co., March 1976, pp. 169–170 [prepared under contract to the U.S. Department of Labor].

> society is rightfully at the bottom rung. Since hundreds of persons in this subclass would be indistinguishable in terms of physical and speech characteristics from Mexican Americans, we fear that this same sentiment would soon begin to overlap into a consensus regarding the place of Mexican Americans in our society. And on a related point, Mexican Americans themselves might well begin to question their own status in our society given the obvious discrimination against their Mexican brothers sanctioned by the nondeportable status proposal. *Cf. Brown* v. *Board of Education*, 347 U.S. 483, 494 (1954). We think it clear that the nondeportable status proposal would be a catalyst for heightened discrimination against the Mexican American community, and would directly result in a diminished sense of self-esteem among the members of that community.[57]

Here as with so many other aspects of the basic issue of the desirability of a large-scale temporary worker program, proponents of a legal program would argue that the United States is faced with a choice of the lesser of two evils. That is, whatever the indignities associated with the low status of Mexican bracero workers, and the unexpected social and political problems associated with European guestworker programs, proponents would argue that they are outweighed by the abuses associated with the current illegal system prevalent in the United States.

Some analysts argue that the current U.S. use of illegal migrant workers is a version of the European guestworker programs, with the important difference that it provides more benefits to the employers and fewer protections to the foreign workers. Alejandro Portes presents the proposition that "the real economic function of illegal workers in the United States is, in essence, no different from those fulfilled by other forms of immigration as temporary contract labor—in other advanced industrial economies. * * * Whereas industrialized Western European countries have chosen to channel immigrant labor through temporary legal arrangements, the United States has maintained a surreptitious flow where individual initiative is left to provide the motor for the movement and enforcement agencies are entrusted with controlling the flow and insuring its temporary character." [58]

Without question, our own past experience as well as the European experience offer numerous examples of mistakes to be avoided in structuring and administering a guestworker program. Thus, the interagency task force observes that, "The major Western European mistake to be avoided by the United States is the formulation of a guestworker program without bearing constantly in mind the political, social and cultural identities of the guestworkers." [59]

Because of our large and well developed network of voluntary agencies traditionally committed to serving refugees and immigrants, it is possible that the United States is better equipped to deal with "guestworkers" in our midst than were the European Countries. This is particularly true given ethnic identification of Mexican workers with a sizable number of the U.S. native population, which was not

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[57] MALDEF. Statement of Position Regarding the Administration's Undocumented Alien Legislative Proposal. Washington, Sept. 26, 1977, p. 34.
[58] Portes (1977), p. 35.
[59] Interagency Task Force report (1979), p. 526.

the case in Europe. Proponents of a legal program would also argue that legalizing the status of foreign migrants will make it easier to deal with their "political, social and cultural identities," as recommended by the interagency task force.

F. Program Structure and Administration

The organizational structure and administration of an expanded temporary worker program is potentially one of the most controversial aspects of such a program. A key issue concerns the relationship between the worker and the U.S. employer. W. R. Bohning argues that, "In essence, one need not view a Mexican only as a contract laborer," [60] and proposes a system whereby "employers could freely employ workers who have duly visaed passports." [61] A system has been outlined by Wayne Cornelius who proposes issuing "through U.S. Consulates in Mexico, a predetermined number of temporary worker visas permitting up to 6 months (not necessarily consecutive) of employment in the U.S. each year." [62] The visas would be issued on a first-come, first-served basis, without the requirement for prearranged contracts with U.S. employers and subject to no geographical or occupational restrictions. Bills introduced in the 96th Congress would create a new nonimmigrant category allowing for a predetermined number of Mexican nationals to enter for employment for limited periods of time without predetermined contracts.[63] This general approach also characterized the Carter administration's proposal for a temporary adjustment of status program.[64]

In questions directed specifically at the Cornelius proposal but also applicable to related proposals, Steven Karalekas, a Washington lawyer from a firm "which represents employers around the U.S. who use both legal and illegal migrant workers," [65] asked:

> And what about the potential impact of legalizing the Mexican workers who came in, as Professor Cornelius has suggested, by giving them an entry visa to take any job that they want in any sector of the economy for 6 months? Agricultural employers are very concerned about what would happen to them if there is a complete legalization of migrant workers. Many of the employers whom we've talked with say that as soon as you legalize the migrants' status in the U.S., they're going to be gone: They're not going to stay in agriculture; they will go to higher-paying jobs, they're going to seek better education—the normal process that one would expect. Where does that leave agriculture? Does that argue for the current H–2 system, where if a foreign worker comes into the U.S. he's tied to a given employer in a given job for a given period of time, and if he doesn't want to continue on that job, or he doesn't like his employer, then he must go home? [66]

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[60] Bohning (1979), p. 18.
[61] Ibid., p. 17.
[62] Cornelius, Wayne. Proposal for a System or Temporary Worker Migration Visas, May 7, 1977, p. 1. (Cited as Cornelius (1977).)
[63] S. 1427 (Senators Schmitt, Hayakawa, and Goldwater); H.R. 5128 (Representatives Lungren, Badham, and Dannemeyer).
[64] Section 4, S. 2252, H.R. 9531, 95th Cong.
[65] Rockefeller Foundation conference (1978), p. 43.
[66] Ibid., p. 49.

An alternative approach to the problem of worker status would be to require formal contractual relationships between workers and employers. Models for such an approach would be the current H–2 program, the bracero program, and most of the European guestworker programs. Along these lines, Congressman Hamilton Fish, who has argued in the past for an expanded "Temporary Documented Worker program," [67] has introduced legislation [68] which would amend the current H–2 provision of the Immigration and Nationality Act primarily to expedite the administration of the provision. Under this provision, U.S. employers petition for foreign workers who are legally required to work for them upon their entry into the United States.

A second major issue concerns the extent to which temporary alien workers would be permitted to participate in U.S. public assistance and benefit programs. Nonimmigrants, including H–2 temporary workers, are currently barred by law or regulation from participation in the major Federal public assistance programs, including Supplemental Security Income (SSI), Aid to Families with Dependent Children (AFDC), medicaid, and food stamps. None of the bills referred to above would alter this. On the other hand, North and LeBel, who oppose an expanded temporary worker program, argue that any such program should adopt the European policy of providing coverage for guestworkers under social insurance programs.[69]

Another issue concerns the extent to which workers would be allowed to eventually become permanent residents. One of the key problems associated with the European guestworker programs has been the tendency of the temporary workers to become permanent. This occurs partly because the need for their labor proves not to be temporary, and partly because of the workers' growing social and economic attachment to the host country.

A number of proposals—notably those of W. R. Bohning,[70] Charles Keely,[71] and Michael Piore[72]—for the expanded use of temporary workers in the United States would allow for a transition to permanent status based on length of residence, relation to U.S. residents, et cetera. Cornelius' proposal does not include such a provision, presumably reflecting his finding that Mexicans do not wish to settle here permanently. Similarly, S. 1427 and H.R. 5128 would prohibit adjustment to permanent resident status by workers entering under the new nonimmigrant temporary worker category.

The size of the program is also an issue. Too small a program would be doomed to failure as an alternative to illegal migration; too large a program probably would almost guarantee an adverse impact on U.S. workers. Bohning proposes a hypothetical initial number of 1 million, with a reduction of 125,000 a year intended to eventually wean U.S. employers from a reliance on temporary foreign workers. Under this proposal, the temporary workers would become eligible to adjust to permanent residence after 5 years, if they so wished.[73] Cornelius

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[67] U.S. Congress. House. Committee on the Judiciary. Illegal Immigration and U.S.-Mexican Border Control: Analysis and Recommendations; Critique of Administration Adjustment of Status Proposals. Committee Print No. 20. 95th Cong., 2d sess. 1978, pp. 6–7.

[68] H.R. 326, 96th Cong.

[69] North and LeBel (1978), p. 203.

[70] Bohning (1979), p. 20.

[71] Keely, Charles. U.S. Immigration: A Policy Analysis. New York, The Population Council, 1979, pp. 60–61.

[72] Piore (1978), p. 69; Piore (1979), pp. 187–188.

[73] Bohning (1979), pp. 16–17, p. 20.

proposes, also hypothetically, an initial issuance of 800,000 visas to be adjusted based on seasonal needs. He recommends that "The number of visas issued should be adjusted on a monthly and yearly basis, to reflect fluctuations in the U.S. demand for alien labor and the rate of unemployment and underemployment within Mexico." [74]

The overall context in which a temporary worker program would be implemented is also an issue. For instance, some proposals would couple the program with an amnesty provision giving permanent residence to some of illegal migrants currently in the United States. Alternatively, an attempt could be made to incorporate them in the program, as was done more or less successfully at several points during the bracero period. Cornelius would prohibit the future issuance of visas to Mexican workers who had violated the time restrictions on employment in the U.S.[75] Bohning argues that, "Logically, a controlled entry programme (i) should be accompanied by the stiffest penalties for knowingly hiring illegal entrants and (ii) such future illegal entrants should be excluded from the waiting list." [76]

The issue of program administration is of particular importance since this was a major problem with the bracero program. Based on the U.S. and European guestworker experiences, it is difficult to see how such a program could be administered without significantly increasing the involvement of the Federal Government in the regulation of the labor market. Increased Federal regulation would probably be necessary to protect the interest of both U.S. and foreign workers; a laissez-faire approach to a large-scale temporary alien worker program could result in alien-dominated areas and occupations. This was the case during the bracero program, is arguably currently the case in certain southwest border areas, and has been the case since World War II in the construction industry in Guam.

Examples of the kind of Federal regulation which might be required include worker identification systems and employer sanctions for hiring illegal entrants. The extent to which increased Federal involvement might present serious problems to both U.S. employers and civil libertarians is among the most serious issues raised by an expanded legal program. Additionally, Ginzberg's argument against the expansion of the current temporary worker program on the grounds that, "The U.S. government should not be a long-term partner in obtaining the basic labor supply for domestic employers," [77] is relevant here.

The issue of whether primary authority for the administration of an expanded temporary worker program should be vested in the Department of Labor is also controversial. The Labor Department's past record in administering the bracero program has been severely criticized, as has its ongoing administration of the much smaller H–2 program, particularly by employers. Of the legislation introduced in this Congress pertaining directly to this issue, H.R. 326 (Fish) is intended to expedite the Labor Department's administration of the H–2 program; S. 1427 (Schmitt et al.) and H.R. 5128 (Lungren et al.) would divide authority for the administration of an expanded new

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[74] Cornelius (1977), p. 1; see p. 2.
[75] Ibid., p. 1.
[76] Bohning (1979), p. 17.
[77] Letter to Secretary of Labor Ray Marshall, May 1, 1979, p. 3, reprinted in U.S. National Commission for Manpower Policy (1979), p. 101.

program between the Departments of Justice and State, and include provisions for consultation with the Secretaries of Agriculture, Commerce, and Labor.

If the decision is made to move in the direction of an expanded temporary worker program, among the principal lessons to be learned from our 22-year experience with the bracero program and from the European guestworker experience is that the seriousness, complexity, and far-reaching consequences of such an undertaking can hardly be overestimated. It may be that, despite its shortcomings, such a program is the lesser of two evils, the greater evil being continued unregulated illegal migration. The question remains as to whether, politically or pragmatically, there is a better way to curb illegal migration, assuming the United States wishes to change the status quo.

APPENDIX

ALIEN LABOR PROGRAMS AND ALIEN LABOR:

SELECTED REFERENCES, 1975-1979

By
Marsha K. Cerny
Senior Bibliographer

INTRODUCTION

The bibliography focuses on the European guest worker programs and the situation facing alien labor programs in the United States. Emphasis is given to the conditions under which these immigrants live and work and to the economic impact that they have on the host countries.

The bibiliography includes references to Congressional documents, monographs, and journal articles. These references were drawn from the data base maintained by the Library Services Division of the Congressional Research Service and the Library of Congress Computerized Catalog. Many of the monographs and journal articles are annotated; the Congressional publications have been annotated when it was deemed necessary to facilitate access to the material in the documents.

Citations to items classified in the Library of Congress collections include the Library's call number. All serials are provided with the call number for the bound volumes of the journal regardless of whether the issues cited have actually been bound at this time. Unbound journal issues may be found in the Newspaper and Current Periodical Room. Citations with the designation LAW may be found in the Law Library.

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EUROPEAN GUEST WORKER PROGRAMS

Am I a man and not a brother? Economist, v. 255, Feb. 1, 1975: 66-67.
HG11.E2, v. 255

Contends that "Europe's migrant workers are an economic boon, and a social problem--which, at present, is being handled rather badly."

Bahadir, Sefik Alp. Turkey and the Turks in Germany. Aussenpolitik, v. 30, no. 1, 1979: 100-114. D839.A8853, v. 30

Outlines the problems of labor migration and its effects on Turkey's economy and society. Notes that Turkey is of particular significance among the European labor supply countries for three reasons: it is the largest supplier, it is more dependent on the foreign exchange generated than any other country, and it is making a strong effort to prevent the repatriation of its workers abroad.

Benard, Cheryl. Migrant workers and European democracy. Political science quarterly, v. 93, summer 1978: 277-299. H1.P8, v. 93

Discusses the main conditions that characterize the situation of migrant workers and contends that "migrant workers in Europe are a phenomenon not adequately subsumable under any of the categories of liberal theory or orthodox Marxist analysis."

Bennoune, Mahfoud. The Maghribin migrant workers in France. Race & class, v. 17, summer 1975: 39-56. HT1501.R25, v. 17

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----- Those convenient migrants: Europe's expendable work force. Nation, v. 221, Oct. 18, 1975: 369-372. AP2.N2, v. 221

Describes the working and living conditions of immigrant workers in Switzerland.

Berger, Suzanne. Foreign workers in West Europe. Journal of the Institute for Socioeconomic Studies, v. 3, winter 1978: 50-58. HV95.I49a, v. 3

Examines the reasons Western European countries use alien labor when domestic unemployment levels are rising.

Blumenfeld, Yorick. Europe's foreign laborers. Washington, Editorial Research Reports, 1975. 545-560 p. (Editorial research reports, 1975, v. 2, no. 4)
H35.E35 1975

Contents.--Tensions over migrant workers.--Rapid influx of foreign labor. --Prospect of expanded immigration.

Bohning, W. R. The ILO and contemporary international economic migration. International migration review, v. 10, summer 1976: 147-156.
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----- Some thoughts on emigration from the Mediterranean Basin. International labour review, v. 3, Mar. 1975: 251-277. HD4811.I65, v. 3

Explores some of the consequences of laissez-faire emigration for employment and development. Raises questions on various principles and instruments of emigration policy connecting international movement of human resources with development in general and employment policy and manpower planning in particular.

Bourguignon, Francois, Georges Gallais-Hamonno, and Bernand Fernet. International labor/migrations and economic choices: the European case. Paris, Organisation for Economic Cooperation and Development, 1977. 294 p.
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At head of title: Development Centre Studies.

Partial contents.--Migration of labour and capital--general considerations, by F. Bourguignon.--The economic implications of resorting to foreign labor and capital exports, by F. Bourguignon.--The direct short-term effects and advantages of the migration of manpower or capital, by G. Gallais-Hammono.

Campbell-Platt, Kiran. Workers in Britain from selected foreign countries. London, Runnymede Trust [1975] 17 1. HD8398.A2C35

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Focuses on the growing importance of immigrant workers in the wage-earning working population in all Western European countries and the increase in political struggle and protest movements concerning them.

Commission of the European Communities. Action programme in favour of migrant workers and their families. [Luxembourg] European Communities Commission [Washington, for sale by the European Community Information Service, 1976?] 22 p. HD8380.5.C65 1976

Conference of Local and Regional Authorities of Europe. Migrant workers and local and regional authorities. Strasbourg [Council of Europe] 1978. 60 p.
HD8380.5.C66 1978

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----- Immigrant labor and working-class politics: the French and British experience. Comparative politics, v. 11, Oct. 1978: 24-41.
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Focuses on the way in which the governments, parties, and unions of France and Britain have responded to immigration, especially the economic and political reasons for restricting the flow of alien labor.

Gendt, Rien van. Return migration and reintegration services. Paris, OECD, 1977. 64 p.
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Describes an approach to reintegrating migrant labor back into the socio-economic systems of their own countries.

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Guestworkers: the lessons of Western Europe's foreign labor experience, 1963-1978. In U. S. Interagency Task Force on Immigration Policy. Staff report. [Washington] 1979. 481-527 p.

Analyzes the formation and implementation of guestworker policies; describes the socio-economic, political and legal background of the phenomenon; evaluates the success of Western European guestworker policies; and applies lessons from the Western European experience to the United States.

Hammon, Paul Reed. New convention aimed at improving condition of migrant workers in Council of Europe nations. Texas international law journal, v. 13, spring 1978: 353-364.
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Kosack, Godula. Migrant women: the move to Western Europe--a step towards emancipation? Race & class, v. 17, spring 1976: 369-379. HT1501.R25, v. 17

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Kramer, Jane. The invandrare. New Yorker, v. 52, Mar. 22, 1976: 43-44, 47-48, 50, 55-56, 58, 63-64, 66, 68, 70, 74-76, 78, 83-84. AP2.W6772, v. 52

Describes the life of a Yugoslav who works in Sweden.

Krane, Ronald E. International labor migration in Europe. New York, Praeger [1979] 250 p. (Praeger special studies) HD8378.5.A2157 1979

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Kuhn, W. E. Guest workers as an automatic stabilizer of cyclical unemployment in Switzerland and Germany. International migration review, v. 12, summer 1978: 210-224. JV6001.I55, v. 12

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Includes bibliographies.

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Discusses the situation of West Germany's migrant workers and views their condition as an "inherent contradiction in a liberal welfare state." Examines West Germany's labor policy and the relationship between German labor unions and the migrants.

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Analyzes the impact of European alien labor flows and concludes that the "current policies and attitudes permit short-term mutual advantages to such labor flows while at the same time they impose long-term mutual disadvantages."

Minet, Georges. Spectators or participants? Immigrants and industrial relations in Western Europe. International labour review, v. 117, Jan.-Feb. 1978: 21-35. HD4811.I65, v. 117

Examines the degree to which immigrants enjoy effective equality of opportunity and treatment with nationals in respect of membership in trade unions, exercise of trade union rights and eligibility for office in trade unions and in labor-management relations bodies. Finds that immigrant workers are often set apart from native workers, but that the situation is slowly changing.

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----- The migratory chain. Paris, 1978. 53 p. HD8378.5.A2073 1978

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----- The OECD and international migration. Paris, c1975. 51 p. HB2041.073 1975

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Papademetriou, Demetrios G. European labor migration: consequences for the countries of worker origin. International studies quarterly, v. 22, Sept. 1978: 377-408. HJ2240.I68, v. 22

After arguing that labor emigration has merely functioned as a palliative agent of the labor supplying countries' structural deficiencies, the author outlines a set of policy initiatives aimed at the improvement of the situation--such as measures for redressing some of the structural causes of emigration, the development of a coherent manpower and development strategy which would utilize the skills and experiences of target returning emigrants, and policies designed to utilize repatriated capital in an intelligent manner.

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Singer, Louis H. Free movement of workers in the European economic community: the public policy exception. Stanford law review, v. 29, July 1977: 1283-1297. K23.T3, v. 29

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Slamming the door on Europe's guest workers. Economist, v. 256, Aug. 9, 1975: 23-24, 27. HG11.E2, v. 256

Examines the stringent restrictions adopted to protect the native country's workers after the 1973 oil crisis.

Symposium on Equality of Opportunity and Treatment in Employment in the European Region, Geneva, 1975. Equality of opportunity and treatment in employment in the European region: problems and policies; report and documents of a regional symposium (Geneva, 21-29 April 1975). Geneva, International Labour Office, 1975. 89 p. HD8378.5.A2S95 1975

At head of title: International Labor Organization.

"The third of a series of regional meetings...the first two having been held in the Asian region (in 1969) and in the American region (1973), respectively."

United Nations. Secretary-General, 1972- (Waldheim). Welfare of migrant workers and their families. [New York] 1978. 21 p. (United Nations. Document E/CN.5/568)

Examines the magnitude, source, and destination of international migration in the world today. Focuses on the general characteristics of migrant workers. Analyzes the problems concerning the welfare of migrant workers and their families, and the measures that are being designed to solve these problems.

----- Welfare of migrant workers and their families: principles concerning migrant workers and their families: principles already embodied in international instruments adopted by United Nations organizations. [New York] 1978. 27 p. (United Nations. Document E/CN.5/564)

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Wadensjo, Eskil. Remuneration of migrant workers in Sweden. International labour review, v. 112, July 1975: 1-14. HD4811.I65, v. 112

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Werner, Heinz. Some current topics of labour migration in Europe; some past facts and figures. International migration, v. 15, no. 4, 1977: 300-307. JV6001.A1I5, v. 15

Reviews migration trends in Western Europe, the free movement of labor, and some of the labor market aspects in the employment of foreign workers.

Widgren, Jonas. Recent trends in European migration policies. International review of education, v. 21, no. 3, 1975: 275-285. L18.I6, v. 21

Describes the composition of the migrant worker population in the countries of Western Europe and traces developments in government policies regarding control and stabilization of immigration, provision for education and granting of political rights.

Workers' participation in an international economy, edited by Bernhard Wilpert, Ayse Kudat, and Yilmaz Ozkan. Kent, Ohio, Comparative Administration Research Institute; distributed by the Kent State University Press, c1978. 178 p. HD5650.W67

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Alba, Francisco. Mexico's international migration as a manifestation of development pattern. International migration review, v. 12, winter 1978: 502-513. JV6001.I55, v. 12

Analyzes some of the aspects of the Mexican economic and technological structures, as well as certain features of the modernization process. Examines the Mexican migratory flow into the United States in the context of peripheral and central economies.

Alien labor certification. Minnesota law review, v. 60, May 1976: 1034-1060. LAW

Comment reviews alien labor certification by the Department of Labor under the Immigration and Nationality Act. Observes that "decisions regarding whether to certify an alien laborer for immigration are presently a plethora of ad hoc and often inconsistent resolutions based on imprecise data."

Bach, Robert L. Mexican immigration and the American state. International migration review, v. 12, winter 1978: 536-558. JV6001.I55, v. 12

Analyzes the contemporary situation with Mexican immigration through an historical perspective, showing how the United States permitted illegal immigration to meet its commitments to different sectors of capital and labor. Outlines the historical dialectics which made illegal immigration the direct consequence of the strength of organized labor.

Benke, Patricia D. The doctrine of preemption and the illegal alien: a case for state regulation and a uniform preemption theory. San Diego law review, v. 13, Dec. 1975: 166-174. LAW

Analyzes the "doctrine of preemption" in connection with two California Court of Appeals decisions which declared that state regulation of employment of illegal aliens was unconstitutional. "This article is intended to explore the propriety of those rulings and suggest the feasibility of a uniform doctrine of preemption."

Bennett, James T., and Manuel H. Johnson. Illegal aliens: economic and social issues. Akron business and economic review, v. 9, fall 1978: 11-16. HF5001.A43, v. 9

The authors provide an overview of the problems associated with illegal aliens focusing on the role of illegal aliens in labor markets and their influence on the competition for jobs and for wages.

Bohning, W. R. Regularising indocumentados. Geneva, International Labour Office, 1979. 41 p. (World Employment Programme. Working papers 36)
Analyzes the issues involved in President Carter's proposals to reduce the flow of undocumented aliens into the United States.

Briggs, Vernon M., Jr. The Chicano worker, by Vernon M. Briggs, Jr., Walter Fogel, and Fred H. Schmidt. Austin, University of Texas Press [1977] 129 p. HD8081.M6B74
Examines the Chicano labor-market experience with descriptions of their income and job status.

----- Illegal immigration and the American labor force: the use of "soft" data for analysis. American behavioral scientist, v. 19, Jan.-Feb. 1976: 351-363. H1.A472, v. 19
Inquires into the evidence on illegal immigration and its impact on the U.S. labor force.

----- Labor market aspects of Mexican migration to the United States in the 1970s. In Views across the border: the United States and Mexico, edited with an introduction by Stanley R. Ross. Albuquerque, University of New Mexico Press [1978] p. 204-225. E183.8.M6V5
Examines the historical characteristics of Mexican migration and its effect on the U.S. labor market.

----- Mexican migration and the U.S. labor market: a mounting issue for the seventies. [Austin] Center for the Study of Human Resources, University of Texas [1975] 37 p. (Studies in human resource development, no. 3) JV6895.M48B74

----- Mexican workers in the United States labour market: a contemporary dilemma. International labour review, v. 112, Nov. 1975: 351-368. HD4811.I65, v. 112
"Believing that the present situation, which harms United States workers as well as the immigrants themselves, could soon become uncontrollable, the author suggests a number of reforms Washington might introduce to assist in the smooth integration of legal immigrants, to combat illegal immigration far more vigorously and to reduce the push effect by helping to strengthen Mexican industry."

Buck, Rinker. The new sweatshops: a penny for your collar. New York, v. 12, Jan. 29, 1979: 40-41, 43-46. F128.1.N4, v. 12
Surveys conditions in New York City's garment worker sweatshops, which are said to employ 50,000 to 70,000 workers. Asserts that "virtually all the shops are non-union, unregulated, and patently illegal--a burgeoning sector of our local economy willfully violating just about every fair-labor standard."

Bustamante, Jorge A. Commodity migrants: structural analysis of Mexican immigration to the United States. In Views across the border: the United States and Mexico, edited with an introduction by Stanley R. Ross. Albuquerque, University of New Mexico Press [1978] p. 183-203. E183.8.M6V5
Concentrates on the economic, social, and political factors that have shaped the phenomenon of undocumented immigration from Mexico.

----- Structural and ideological conditions of the Mexican undocumented immigration to the United States. American behavioral scientist, v. 19, Jan.-Feb. 1976: 364-376. H1.A472, v. 19

Outlines basic Marxian theory regarding "labor power" and "surplus value", and applies it to explain historically the conditions of immigrants in the United States, focusing particularly on the Mexican undocumented alien.

----- Undocumented immigration from Mexico: research report. International migration review, v. 11, summer 1977: 149-177. JV6001.I55, v. 11

Focuses on three aspects of the undocumented immigration from Mexico to the United States: the state of the research art on this phenomenon, the characteristics of this migration, and suggestions on how the problem might be solved.

Catz, Robert S. Regulating the employment of illegal aliens: DeCanas and Section 2805. Santa Clara law review, v. 17, fall 1977: 751-775. LAW

Article explores the magnitude of the illegal immigration problem and Federal efforts to solve it. Argues that section 2805 of the California Labor Code is not in conflict with Federal immigration laws.

Chapman, Leonard F., Jr. Illegal aliens--a growing population. Immigration and Naturalization reporter, v. 24, fall 1975: 15-18. KF4802.I2, v. 24

Discusses how many illegal aliens there are in the U.S., where they come from and settle, what types of jobs they obtain, and the dangers of population growth with the influx of illegals. Advocates the passage of strict laws against employers who knowingly hire illegal aliens.

Chin, Denny. Aliens' right to work: state and Federal discrimination. Fordham law review, v. 45, Mar. 1977: 835-859. LAW

Comment examines recent developments which indicate that the suspect class of alienage is slowly eroding. Also describes the efforts of the courts to develop a standard for reviewing the rights of aliens to work.

Controversy over proposals to reduce the number of illegal aliens in the U.S.: pro and con. Congressional digest, v. 54, Jan. 1975: whole issue. JK1.C65, v. 54

Includes statements by Rep. Peter Rodino, Rep. Frank Annunzio, Rep. Joshua Eilberg, Rep. William Keating, Rep. Edward Roybal, Rep. Robert Price, and Rep. Herman Badillo.

Corbett, John G. Mexico-United States and West European labor migration: a comparative analysis. In Krane, Ronald E. International labor migration in Europe. New York, Praeger [1979] p. 223-244. HD8378.5.A2157 1979

Compares the labor migration in Western Europe and from Mexico to the United States. Concludes that the international labor migration is at a watershed and that new approaches are needed to cope with the strains and problems involved.

Cornelius, Wayne A. Illegal Mexican migration to the United States: recent research findings, policy implication and research priorities. Cambridge. Mass., Center for International Studies, Massachusetts Institute of Technology, 1977. 28 p.

"C/77-11"

"The basic argument advanced in this paper is that a truly effective, long-term solution to the problem of illegal Mexican migration to the United States can be achieved only through concerted, bilateral efforts, with primary emphasis on action by the Mexican government."

Mexican and Caribbean migration to the United States: the state of current knowledge and recommendations for future research; a report to the Ford Foundation. [n.p.] 1979 307 p.

----- Mexican and Caribbean migration to the United States: the state of current knowledge and recommendations for future research. [n.p.] 1979. 307 p.

Summarizes existing evidence on all forms of U.S.-bound migration: legal and illegal, temporary and permanent, low-skilled and high-skilled.

----- Mexican migration to the United States: causes, consequences, and U.S. response. Cambridge, Mass., Migration and Development Study Group, Center for International Studies, Massachusetts Institute of Technology, 1978. 119 p.

Attempts to identify the basic factors underlying Mexican migration to the United States and the U.S. responses to this migratory movement. Summarizes the available evidence concerning the magnitude, characteristics, and socioeconomic impacts of this migration.

----- Proposal for a system of temporary worker migration visas. [n.p.] 1977. 9 1.

Memorandum which sets forth the rationale for a system of temporary worker migration visas as a possible solution to the problem of undocumented aliens.

----- Undocumented immigration: a critique of the Carter administration's policy proposals. Migration today, v. 5, Oct. 1977: 5-6, 8, 16, 18-20.

Includes an evaluation of the possible effect President Carter's proposals for dealing with the Mexican component of the flow of undocumented immigrants will have on labor markets and wage levels.

Cowan, Edward. Apples and aliens: growers challenge Feds over who does the picking. Regulation, v. 2, Nov.-Dec. 1978: 40-45.

Examines the controversy surrounding the alien certification program as it applies to apple pickers. In principle, there is much to be said for this program. "Congress has declared that Americans should get first crack at available farm work and that growers should be prevented from depressing pay scales by importing aliens who would work for less than the going rate. ... But if the principle is agreed upon, the practice is not. The alien certification program is working not smoothly, but litigiously and with ingrained adversarial attitudes."

Dewind, Josh, Tom Seidl, and Janet Shenk. Contract labor in U.S. agriculture. NACLA report on the Americas, v. 11, Nov.-Dec. 1977: 5-37.
F1401.N58, v. 11

Four articles examine the use of West Indians and Puerto Ricans in the harvesting of sugarcane, apples, tobacco and other crops in the Eastern U.S. The articles criticize working conditions and treatment of workers by the U.S. growers and by labor organizations in their own countries and in the U.S.

Fogel, Walter A. Illegal aliens: economic aspects and public policy alternatives. San Diego law review, v. 15, Dec. 1977: 63-78.
LAW

Discusses the economic impact of illegal immigration into the United States focusing "on two aspects of that phenomenon: the consequences of illegal aliens, particularly those effects which take place within the labor market, and the policy for dealing with the illegal alien flow."

----- Mexican illegal alien workers in the United States. Los Angeles, Institute of Industrial Relations, University of California [1978] 204 p. (California. University. Institute of Industrial Relations. Monograph series, 20)
HD8081.M6F62

Partial contents.--Background, numbers, and causes.--How the illegal gets in and gets a job.--The INS and enforcement of immigration law.--Illegal workers: characteristics and work experience.--The effects of illegal workers: theory and general observations.--The effects of illegal workers: some evidence.

Fragomen, Austin T., Jr. Permanent resident status redefined. International migration review, v. 9, spring 1975: 63-68.
JV6001.I55, v. 9

Discusses the possible ramifications of Saxbe v. Bustos, a court case which held that permanent resident aliens residing abroad and commuting to work in the U.S. are entitled to maintain their status as permanent residents.

Frisbie, Parker. Illegal migration from Mexico to the United States: a longitudinal analysis. International migration review, v. 9, spring 1975: 3-13.
JV6001.I55, v. 9

Study of illegal agricultural worker migrants show that they are not so much attracted to the U.S., but that they have been forced out of Mexico by an inimical economic situation.

Gallivan, Melissa. Immigration--a state may prohibit the employment of illegal aliens. Vanderbuilt journal of transnational law, v. 9, fall 1976: 907-914.
JX1.V35, v. 9

Case note explains the Supreme Court decision in DeCanas v. Bica which allows a state to regulate the employment of illegal aliens according to local requirements.

Ginzberg, Eli. Summary of a seminar on immigration and employment policies. [Washington, National Commission for Manpower Policy] 1979. 5 l.

Focuses on a set of propositions about immigration and manpower policy including the contribution made to worsening the employment conditions for U.S. citizens.

Gregory, David D., and Robert H. McBride. U.S./Mexican migration and bilateral development strategies. Hanover, N.H., Dartmouth College, 1978. 14 l.

Proposes that the U.S. and Mexico adopt a variation of the Western European type of temporary, legal, labor import system as a solution to the problems associated with undocumented Mexican labor in the U.S.

Hager, Barry M. Illegal aliens: Carter prepares his bill. Congressional quarterly weekly report, v. 35, Apr. 30, 1977: 822-823, 832-833.
JK1.C15, v. 35

Outlines the five key elements under consideration by President Carter at that time: civil fines for employers who knowingly hire illegal aliens, amnesty, stricter enforcement of existing statutes to minimize the employer's incentive to hire illegal aliens, tougher enforcement at the border, and development of a foreign policy aimed at relieving pressures in other countries to immigrate illegally. Reviews past legislation which Congress has considered, and discusses the outlook for the 95th Congress.

Hansen, Nils. Alien migration: Mexican workers in the United States and European "guest workers." Texas business review, v. 52, June 1978: 107-111.
HC107.T4T46, v. 52

Examines what the United States might do to curtail illegal Mexican migration in light of what has been done in northern Europe with its imported labor force.

How illegal aliens rob jobs from unemployed Americans. Nation's business, v. 63, May 1975: 18-20, 22, 24. HF1.N4, v. 63

Examines the illegal alien problem in relation to unemployment, focusing on legislation that would make it illegal for any public agency or official to approve or provide public service to illegal aliens.

Immigrants--and immigrants: perspectives on Mexican labor migration to the United States, edited by Arthur F. Corwin. Westport, Conn., Greenwood Press [1978] 378 p. (Contributions in economics and economic history, no. 17)
HD 8081.M6I43

Partial contents.--Vamos al norte: causes of mass Mexican migration to the United States.--Wetbackism since 1964: a catalogue of factors.--Shadow labor force: Mexican workers in the American economy.--A human rights dilemma: Carter and "undocumented" Mexicans.--The future of Mexican immigration.

Immigration and U.S.-Mexican relations; abridged transcript of a conference at the Rockefeller Foundation, New York City, Nov. 21, 1978; edited by Wayne A. Cornelius. La Jolla, Calif., University of California, San Diego, Center for United States-Mexican Studies, 1979. 92 l. (California. University, San Diego. Center for United States-Mexican Studies. Working paper no. 1)

Concentrates on how the immigration issue is affecting the overall picture of Mexican-American relations. Includes discussions of the effect foreign workers are having on the U.S. economy.

Jenkins, J. Craig. The demand for immigrant workers: labor scarcity or social control? International migration review, v. 12, winter 1978: 514-535.
JV6001.I55, v. 12

Recent analyses of the economic role of immigrant workers from Mexico in U.S. labor markets have been advanced from two divergent interpretations--a labor scarcity argument and a social control thesis. This article analyzes the two perspectives, finding little evidence to support the labor scarcity argument. Instead it is argued that immigrant workers are tied to social control functions in the peripheral sectors of the U.S. economy.

Keely, Charles B. U.S. immigration: a policy analysis. New York, Population Council, 1979. 87 p. (Public issues paper)

Partial contents.--Current contexts of immigration policy.--Adjusting immigration to labor force requirements.--Illegal migration.--Legal immigration and the labor force.--Refugee admittance.

King, Allan G. The effect of illegal aliens on unemployment in the United States. [Austin] University of Texas at Austin [1979?] 21, [9] p.

Focuses solely on the unemployment effects associated with illegal Mexican immigrants.

Koeppel, Barbara. The new sweatshops. Progressive, v. 42, Nov. 1978: 22-26.
AP2.P8655, v. 42

Focuses on small-scale labor-intensive businesses that exploit immigrants with low wages and poor working conditions, principally in New York and Los Angeles.

Manulkin, Gary H., and B. Robert Maghame. A proposed solution to the problem of the undocumented Mexican alien worker. San Diego law review, v. 13, Dec. 1975: 42-68. LAW

Article illustrates failures of the present laws to deal with illegal alien workers. Considers proposed remedies, and offers an alternative route for alleviation of the problem.

Margain, Hugo B. A Mexican perspective on illegal immigration. In Extension of remarks of John F. Seiberling. Congressional record [daily ed.] v. 125, Nov. 2, 1979: E5445-E5446. J11.R5, v. 125

Suggests a new agreement between the United States and Mexico for a temporary migrant worker program.

Marshall, Ray. Employment implications of the international migration of workers. In National Council on Employment Policy. Illegal aliens: an assessment of the issues; a policy statement and conference report with background papers. Washington, 1976. p. 52-65.

Discusses the various factors involved in Mexico-U.S. immigration, citing as the main cause of workers migrating from country to country the international disparities in economic conditions and job opportunities; describes the "European experience"; and analyzes general conclusions which can be made about the international movement of workers.

Martinez, Vilma S. Illegal immigration and the labor force: an historical and legal view. American behavioral scientist, v. 19, Jan.-Feb. 1976: 335-350.
H1.A472, v. 19

Provides an insight into the illegal alien problem from the perspective of a Mexican-American.

Maxwell, Evan. Politics of immigration could splinter '80 Democratic campaign. Los Angeles times, Nov. 5, 1979, pt. 1: 3, 21.

National Council on Employment Policy. Illegal aliens: an assessment of the issues; a policy statement and conference report with background papers. Washington, 1976. 76 p.

Concludes that the U.S. must "try to avoid the admission of workers who either would directly compete with legal residents or are likely to become a permanent underclass of workers unable to protect themselves." Recommends rigorous enforcement of the law against hiring illegal aliens, strengthening the labor certification process, and recruiting native workers.

Nimetz, Matthew. U.S.-Mexican relations and the undocumented alien problem. [Washington] Dept. of State, Office of Public Communication, 1978. 8 p. (U.S. Dept. of State. Office of Public Communication. Current policy no. 46)

Reviews the issues in U.S.-Mexican relations focusing on the problem of undocumented aliens.

North, David S. The characteristics and role of illegal aliens in the U.S. labor market: an exploratory study, by David S. North and Marion F. Houstoun. Washington, Linton, 1976. 181 p.

Reports information on the demographic characteristics, country of origin, employment history, wages and participation in public services of illegal aliens in the U.S., as well as examining the manpower policy implications of an analysis of the data on illegals.

----- Illegal aliens: fictions and facts. Worklife, v. 2, Dec. 1977: 17-18. HD5724.W643, v. 2

Explores some of the myths surrounding illegal aliens including the myth that a substantial portion of these aliens hold well-paid jobs and the myth that illegal aliens are not competing with resident workers.

----- Immigrants, employers, and exclusion. Society, v. 14, Sept.-Oct. 1977: 23-26. H1.T72, v. 14

Investigates the labor market experiences of immigrants.

Piore, Michael J. Birds of passage: migrant labor and industrial societies. Cambridge, New York, Cambridge University Press, 1979. 229 p. HD6300.P56

Analyzes the migration of workers from underdeveloped rural areas to urban industrial societies. Focuses particularly on the rise of undocumented migration to the United States from Latin America and the Caribbean Islands.

Bibliography: p. [211]-217.

----- The 'illegal aliens' debate misses the boat. Working papers for a new society, v. 6, Mar.-Apr. 1978: 60-69. H1.W67, v. 6

"Immigration levels depend on the needs of the U.S. economy--not, by and large, on what Congress allows. Current efforts to reform the immigration system fail to recognize that fact and may therefore be making the situation worse."

----- Illegal immigration in the United States: some observations and policy suggestions. In National Council on Employment Policy. Illegal aliens: an assessment of the issues; a policy statement and conference report with background papers. Washington, 1976. p. 25-35.

Argues that industrial nations generally have jobs which the domestic labor force rejects and which foreign laborers are willing to accept. Outlines certain problems illegal immigrants cause in light of the above process; argues for institutionalization of temporary work visas; explores the structures necessary to implement the goals; and describes the present institutional structures and their shortcomings.

----- The illegals: restrictions aren't the answer. New republic, v. 172, Feb. 22, 1975: 7-8. AP2.N624, v. 172

Recounts findings of a study the author did in which he attempted to determine why a massive migration of aliens (including illegals) suddenly began in the late 1960s and early 1970s and not two or three decades earlier. In light of his findings the author claims that enactment of sanctions against employers who hire illegals will only "shift the balance of risk in favor of ignoring all Federal labor regulations."

----- Impact of immigration on the labor force. Monthly labor review, v. 98, May 1975: 41-44. HD8051.A78, v. 98

Suggests that the increase in immigration to the United States, both legal and illegal, in recent years is due to the lack of labor supply in the "secondary sector", a term used to characterize jobs which tend to have low wages, poor working conditions, instability, little opportunity for advancement, and few skill requirements.

Portes, Alejandro. Labor functions of illegal aliens. Society, v. 14, Sept.-Oct. 1977: 31-37. H1.T72, v. 14

Examines the role of illegal migration in solving the labor problems in agriculture and smaller urban enterprises.

----- Toward a structural analysis of illegal (undocumented) immigration. International migration review, v. 12, winter 1978: 469-484. JV6001.I55, v. 12

Examines the current articles on undocumented immigration in the context of research and policy, "complements them by summarizing some of the ideas common to all and by analyzing, on their basis, the significance of the current administration's plan to deal with the illegal flow."

Reavis, Dick J. Without documents. New York, Condor, 1978. 274 p. HD8081.A5R4

Retraces the historical background of the undocumented worker controversy, analyzes from an economic point of view the interests of the parties to the Congressional dispute over undocumented immigration, and sketches some ways the problem could be solved.

Reubens, Edwin P. Aliens, jobs, and immigration policy. Public interest, no. 51, spring 1978: 113-114. H1.P86, no. 51

Concludes that the way to deal with the problem of illegal aliens in the United States would be to combine an informal kind of legitimization for illegals now here, with a tight border seal and a flexible program for authorizing temporary workers.

----- Illegal immigration and the Mexican economy. Challenge, v. 21, Nov.-Dec. 1978: 13-19. HC101.N533, v. 21

Contends that a shift by Mexico to investment in intermediate technology, and a U.S. "guest worker" policy can help to absorb the labor surplus and thus curtail the large illegal immigration of Mexicans to the United States.

----- Temporary admission of foreign workers: dimensions and policies. Washington, U.S. National Commission for Manpower Policy, 1979. 111 p. (U.S. National Commission for Manpower Policy. Special report no. 34)

Partial contents.--Regulations, record, and issues.--Conceptual framework for evaluating temporary foreign workers.--The available policy options and criteria on H-2S.--Evaluation of options.

Reynolds, Clark W. Labor market projections for the United States and Mexico and their relevance to current migration controversies, [Palo Alto, Calif., Stanford University, Food Research Institute] 1979. 36, [17] p.

"To appear shortly in Food Research Institute studies, v. 17, 1979"

Reassesses the mutual relations between Mexico and the United States by demonstrating current and future economic interdependence particularly in the exchange of labor.

Ronfeldt, David, and Caesar Sereseres. Immigration issues affecting U.S.-Mexican relations. [n.p.] 1978. 19 p.

Draft paper presented to the Brookings Institution-El Colegio de Mexico Symposium on Structural Factors Contributing to Current Patterns of Migration in Mexico and the Caribbean Basin, June 28-30, 1978, Washington, D.C.

Formulates the thesis that serious concern in U.S.-Mexican relations is the lack of a policy framework for effectively managing the socioeconomic interdependence between the two countries.

Salinas, Guadalupe, and Isaias D. Torres. The undocumented Mexican alien: a legal, social, and economic analysis. Houston law review, v. 13, July 1976: 863-916. LAW

Article presents a profile of the typical undocumented Mexican alien. Includes a description of the Federal Government's response to the influx of Mexican aliens. Analyzes efforts by state governments to control employment of these aliens and reviews the validity of these actions.

San Diego Co., Calif. Human Resources Agency. A study of the socioeconomic impact of illegal aliens on the County of San Diego. San Diego, Calif. [1977] 206 p.

Addresses the cost impact of illegal aliens on the welfare and educational systems, health care providers, and law enforcement agencies. Also examines the impact of illegal aliens on the local labor market.

Schey, Peter A. Carter's immigration package: a windfall for big business, an anathema for undocumented persons; prepared for National Immigration Coalition and National Alliance on Immigration Laws. [n.p.] 1977. [38] 1.

Argues that President Carter's alien proposals are aimed at providing U.S. business interests with a secondary labor market. If implemented, the program would have a detrimental effect on the undocumented population, on union organizing efforts, and on all workers in the U.S. labor market.

Schniederwind, Barry. Constitutional law--immigration law--state regulation of employment of illegal aliens is not per se preempted by Federal control over immigration or by the Immigration and Nationality Act. DeCanas v. Bica, 424 U.S. 351 (1976). Texas international law journal, v. 12, winter 1977: 87-96. JX1.T48, v.12

Case note analyzes the legal process and thought behind the Supreme Court's decision in DeCanas v. Bica which gave the states the right to use local requirements to determine whether illegal aliens will be given jobs.

Sherman, Jeremy P. Alien labor certification proceedings: the personal preference doctrine and the burden of persuasion. George Washington law review, v. 43, Mar. 1975: 914-935. K7.E63, v.43

Comment discusses recent judicial approaches to the Labor Department's implementation of the "able, willing, qualified, and available" requirement pursuant to considering alien labor for admission to the U.S.

Shinoff, Paul. Sweated home industry: Delancy Street in Los Angeles. Nation, v. 220, Mar. 1, 1975: 240-243. AP2.N2, v. 220

Discusses illegal alien homeworkers in the garment industry in the Los Angeles area, observing that "they form part of an extensive underground work force, bound by no common organizations, often held captive by an unscrupulous employer, but afraid to expose their conditions and themselves."

Singhal, Harish K. Labor certification under revised regulations. Southern California law review, v. 51, July 1978: 823-842. K23.076, v. 51

Article focuses on the labor certification process as contemplated by the Immigration and Nationality Act and as implemented by the revised Labor Department regulations. Considers whether the revised regulations are inconsistent with the statute and whether the Labor Secretary's denial of labor certification is subject to judicial review.

Smith, Barton, and Robert Newman. Depressed wages along the U.S.-Mexico border: an empirical analysis. Economic inquiry, v. 15, Jan. 1977: 51-66. HB1.W47, v. 15

"Analyzes the degree to which the labor market in south Texas is depressed. The results indicate that the magnitude of the problem as reflected by low wages along the border is much less severe than generally believed."

Stoddard, Ellwyn R. Illegal Mexican labor in the borderlands: institutionalized support of an unlawful review. Pacific sociological review, v. 19, Apr. 1976: 175-210. HM1.P33, v. 19

Focuses "on illegal Mexican labor as a normal, functioning ingredient of southwestern agribusiness, encouraged and utilized by it with the approval and support of social and cultural institutions of the region with the tacit cooperation of border control agencies and legal authorities."

Structural factors in Mexican and Caribbean Basin migration; proceedings of a Brookings Institution-El Colegio de Mexico Symposium, June 28-30, 1978. Washington, Brookings Institution, 1978. 380 p.

Partial contents.--Dimensions of the migration phenomenon in Mexico and the Caribbean Basin.--Long term prospects for Mexico's economic development. --Differing perceptions of the migrant flow and organizational and procedural constraints on Mexican and U.S. governments in responding to it.

U.S. Congress. House. Committee on Banking, Finance and Urban Affairs. Subcommittee on International Development Institutions and Finance. Development lending and illegal immigration. Hearing, 95th Congress, 1st session. Sept. 14, 1977. Washington, U.S. Govt. Print. Off., 1977. 53 p. KF27.B547 1977c

U.S. Congress. House. Committee on Education and Labor. Subcommittee on Agricultural Labor. Oversight hearing on Department of Labor certification of the use of offshore labor. Hearing, 94th Congress, 1st session. Mar. 20, 1975. Washington, U.S. Govt. Print. Off., 1975. 460 p. KF27.E332 1975a

Reviews the laws, regulations, and procedures for the Labor Department's certification of the use of foreign labor to harvest certain crops in the U.S.

U.S. Congress. House. Committee on International Relations. Subcommittee on Inter-American Affairs. Undocumented workers: implications for U.S. policy in the Western Hemisphere. Hearings, 95th Congress, 2d session. Washington, U.S. Govt. Print. Off., 1978. 473 p. KF27.I54922 1978a

Hearings held May 17-Aug. 3, 1978.

U.S. Congress. House. Committee on the Judiciary. Immigration and Nationality Act Amendments of 1976; report including cost estimate of the Congressional Budget Office to accompany H.R. 14535. Washington, U.S. Govt. Print. Off., 1976. 37 p. (94th Congress, 2d session. House. Report no. 94-1553)

Legislation relating primarily to the Western Hemisphere including amendments relating to labor certification of aliens.

----- The "Immigration and Nationality Act Amendments of 1976" (P.L. 94-571); a summary and explanation. Washington, U.S. Govt. Print. Off., 1976. 10 p.

At head of title: 94th Congress, 2d session. Committee print.

Legislation focusing primarily on the Western Hemisphere includes provision barring adjustment of status by nonimmigrants who have illegally accepted employment.

U.S. Congress. House. Committee on the Judiciary. Subcommittee on Immigration, Citizenship, and International Law. Alien labor problems in the U.S. Virgin Islands. Hearings, 94th Congress, 2d session, on H.R. 11261. Mar. 11 and 31, 1976. Washington, U.S. Govt. Print. Off., 1976. 111 p. KF27.J864 1976a

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----- Illegal aliens. Hearings, 94th Congress, 1st session on H.R. 982 and related bills. Washington, U.S. Govt. Print. Off., 1975. 450 p.

Hearings held Feb. 4-Mar. 19, 1975.

Examines legislation designed to deal with employers who repeatedly hire illegal aliens rather than giving the jobs to U.S. citizens.

----- Illegal immigration and U.S.-Mexican border control: analysis and recommendations: critique of adminstration adjustment of status proposals. Washington, U.S. Govt. Print. Off., 1978. 12 p. KF4848.M48A25 1978

At head of title: 95th Congress, 2d session. Committee print no. 20.

----- Nonimmigrant alien labor program on the Virgin Islands of the United States: a special study. Washington, U.S. Govt. Print. Off., 1975. 77 p.
At head of title: 94th Congress, 1st session. Committee print.

----- Nonimmigrant visas: requirements and procedures. Hearings, 94th Congress, 2d session. Apr. 7-8, and May 20, 1976. Washington, U.S. Govt. Print. Off., 1976. 226 p. KF27.J864 1976d
"Serial no. 54"
Includes discussion of work-related nonimmigrant categories, especially II and L, as well as of the illegal alien problem, primarily in the context of nonimmigrant visa violators.

----- The use of temporary alien labor on Guam: a special report. Washington, U.S. Govt. Print. Off., 1979. 59 p.
At head of title: 95th Congress, 2d session. Committee print no. 24.
Prepared in consultation with the Education and Public Welfare Division of the Congressional Research Service.

U.S. Congress. House. Select Committee on Population. Legal and illegal immigration to the United States; report. Washington, U.S. Govt. Print. Off., 1978. 68 p. JV6475.U53 1978
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U.S. Congress. Joint Economic Committee. Special study on economic changes. Hearings, 95th Congress, 2d session. Part 1. Washington, U.S. Govt. Print. Off., 1979. 473 p.
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